130.

SUPREME COURT OF THE UNITED STATES.

No. 159.

ADAMS DANIELS ET AL., APPELLANTS,

vs.

SAMUEL WARNER.

APPEAL FROM THE CIRCUIT COURT U. S., FOR MASSACHUSETTS.

INDEX.

	Original.	Print.
Bill of complaint by Samuel Warner	1	3
Exhibit A.	7	9
" B.	8	11
" C.	9	12
" D.	10	13
" E.	11	14
Answer of Adams Daniels	12	15
" Joseph J. Fales	21	25
" Elisha F. Fales	27	32
" Saul B. Scott	30	35
Complainant's exceptions to Daniel's answer	33	38
" " J. J. Fales' "	35	41
Amended answer of Adams Daniels	38	43
Answer of J. J. Fales to complainant's exceptions to his answer	47	54
Commission to John J. Clarke	51	58
Deposition of Peter Harvey	52	59
" Ezra Wilkinson	55	62
" Samuel Warner	59	66
" Caleb Whiting	62	70
" Elias Whiting	73	82
" James B. Wilson	80	89
" Walter H. Fisher	85	94
" Levi Bates	87	97
" Henry Gilbert	93	103
" Charles T. Jackson	105	116
" Newell A. Thompson	114	126
" John F. Archer	135	149
" John W. Whiting	140	154
" John E. Brown	146	161
" Freeman Foster	158	174

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	Original.	Print.
Deposition of John H. Mason	164	180
" Laban Adams	169	186
" George Odiorne	176	194
" Samuel O. Daniels	184	203
" Aaron D. Capen	186	204
Commission to John A. Richardson	191	209
Defendant's interrogatories	192	210
Cross interrogatories	195	214
Deed, George Odiorne and Peter Harvey, 25th August, 1836	198	217
" John T. & M. Emerson, 20th October, 1836	200	219
" Joseph J. Fales and ux., and N. A. Thompson and ux., 25th August, 1836	201	220
" Jos. J. Fales, George C. Thompson and al., 1st Sept., 1835	202	222
" J. J. Pendexter, 5th September, 1835	204	224
" Edward Pendexter, 1st September, 1835	205	225
" Paul Chesley, 17th May, 1838	206	226
Deposition of Jacob J. Pendexter	207	228
" Daniel Mothes	211	232
" John T. Emerson	216	237
" George Ffrost	221	243
" Seth S. Walker	226	248
" Valentine Mathes	230	253
Complainants' interrogatories	234	258
Cross interrogato ies	236	259
Deposition of Henry N. West	237	261
" Jefferson Chamberlain	240	263
Deed—Adams Daniels, 6th October, 1836	240	264
" Stephen Cummings, 11th August, 1835	241	265
Deposition of George C. Thompson	243	266
Interrogatories to Henry Fiske	253	277
Cross interogatories do.	254	279
Deposition of Henry Fiske	255	279
Index to pleadings, documents, and testimony	257	282
Errata	259	284
Deposition of Saul B. Scott	261	286
Defendant's exceptions to plaintiffs' testimony, and prayer for reference to a master	277	301
Decretal order of circuit court	282	303
Report of master	285	303
Exhibit No. 1	296	307
" " 2	297	307
" " 3	298	308
" " 4	299	308
" " 5	300	308
" " 6	301	309
Decree of circuit court	302	309
Appeal	303	309
Certificate of clerk	305	310

UNITED STATES OF AMERICA,
Massachusetts district.

1846—October term.

At a circuit court of the United States for the first circuit, begun and holden at Boston, for the district of Massachusetts, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-six, before the honorable Levi Woodbury, associate justice, Peleg Sprague, district judge.

CIRCUIT COURT OF THE UNITED STATES.

SAMUEL WARNER
vs.
ADAMS DANIELS et al. } Bill in equity.

To the judges of the circuit court of the United States for the district of Massachusetts.

Samuel Warner, of Providence, in the county of Providence, and State of Rhode Island and Providence Plantations, esquire, and a citizen of said State, brings this his bill against Adams Daniels, of Medway, in the county of Norfolk, trader, and Joseph J. Fales, of Boston, in the county of Suffolk, physician, both in the Commonwealth of Massachusetts, and both citizens of said Commonwealth.

And, thereupon, your orator complains and says, that, on the 19th day of November, A. D. 1836, he was seized in his own right, in fee, of about one hundred and thirty acres of land, situated in the towns of Franklin and Wrentham, in the county of Norfolk, aforesaid; said land being particularly described in the annexed paper marked A, which your orator prays to make a part of this his bill of complaint; and your orator alleges that said land, at that time, was of the value of $6,000.

That, on the same day and year last mentioned, said Daniels and Fales, in some way, or by some means to your orator unknown, were possessed of a great number of papers, all literally the same except their numbers and other figures, (a copy of which, except said numbers and figures being annexed and marked B, your orator prays to make a part of this his bill of complaint;) all which papers purported to be certificates that said Fales was the owner of stock of the value of six thousand dollars, in a company incorporated by the legislature of the State of New Hampshire, under the name of 'The Cleft Ledge Granite Company,' and that said company had a capital stock, all paid in by the original stockholders of said company, of $200,000.

That said Daniels and Fales, on the same day, called upon your orator at his dwelling-house, upon his said land in said Wrentham, and pretended to your orator that they were desirous to purchase said lands, and that they would buy the same, and pay your orator for it a valua-

ble consideration; and then and there proposed to your orator that he sell them his said land, and that he receive as a consideration for the same, stock in said Cleft Ledge Granite Company.

And your orator charges that the said Daniels and Fales, in order to induce him to receive said stock as a valuable consideration for a deed of said land, then and there stated to your orator, and in the most unequivocal terms assured him that said stock, or certificates of said stock, was worth its nominal value in cash in Boston, and that said stock was worth more in Boston market than any Boston bank stock.

And then and there asserted, and positively assured your orator, that said stock would pay a very handsome dividend the next spring, and that if said company worked their ledge, there would be an annual dividend of 100 per cent. upon the par value of said stock.

And then and there asserted and assured your orator, that nothing would induce them to part with said stock if they could not get more; that they then wanted said land for the silk business, and could not, under the pressure of the times, raise money to purchase it.

And that said Daniels and Fales, then and there asserted and assured your orator that said company owned a fine brig, and a number of other vessels, which they kept employed carrying stone to New York and other markets, and were desirous of employing a man like your orator (an old sea captain) to look after their navigation; and that said company wanted to employ your orator to sail said brig and sell her cargoes of stone, for which they would give, or cause your orator to make, $1,500 per year; and further asserted and assured your orator, that said company had in their employ, as their agent, a Colonel Bates, at a salary of $1,500 per year, and a clerk, and a vast number of hands employed in getting out stone, to complete a contract with the United States of $50,000.

That said company had a number of contracts for furnishing stone, and particularly that they had one with the Government of the United States for $100,000.

And said Daniels and Fales did then and there assert and assure your orator, that a number of men at Newport (R. I.) had bought into the company, and that through their influence Colonel Bates had obtained very important contracts with the Government of the United States to supply stone for the light-house, platform, fortifications, and other improvements contemplated at Fort Walcot.

And that said Bates was then negotiating with the said Governments' agent, at Newport, (R. I.,) for another large contract, and that they had come so near trading, it was pretty sure the contract would be obtained.

And that said company were certain of a very important contract with Government to supply stone for the fortifications at Portsmouth, N. H.

And your orator charges, that believing every assertion, statement, and assurance, made by said Daniels and Fales, as aforesaid, to be true, and implicitly relying upon their said assurances that said stock was

Worth its nominal value in cash in Boston, and that said company had a capital of $200,000, all paid in by its stockholders, and that their capital stock was invested in such a manner that said stock was valuable, and would pay a good annual dividend upon its nominal value; and that said company were then in actual and successful operations, getting out large quantities of granite rock, to fulfil large and profitable contracts with the Government of the United States, as well as to freight their brig and other vessels to New York and other markets, on the 28th day of said November he entered into a written contract with said Daniels, who, as your orator believes, was then acting as well for said Fales as for himself, (a copy of which contract being annexed and marked C,) your orator prays to make a part of this his bill of complaint, to sell him, said Daniels, all said land for the sum of six thousand dollars, said sum to be paid your orator by said Daniels in shares of the capital stock of said Cleft Ledge Granite Company, at the price per share that should be paid in for said shares, when your orator's deed of said lands should be given to said Daniels.

And your orator further charges, that, according to the terms of his said contract with said Daniels, still remaining under the influence of said several assertions and assurances of said Daniels and Fales, respecting the value of said stock, and still believing them all to be true, on the eighth day of December, A. D. 1836, he made, signed, sealed, and delivered to said Daniels a warrantee deed of said land, (a copy of which is annexed and marked A,) and received from said Daniels a great number of papers like unto that annexed and marked B, which said papers purported to show that said Cleft Ledge Granite Company had a capital stock of $200,000, as aforesaid, paid in, and that said shares represented $25 of that capital each; and that said Fales was the owner of 240 of said shares at their nominal value, amounting to $6000, which said papers were paid by said Daniels, and received by your orator, as the full and only consideration for his said deed to said Daniels, and upon the supposition that $25 had been paid in upon each of said shares at that time, and were so paid by said Daniels, and received by your orator, upon that supposition by your orator, as a fulfilment of said Daniels' part of said agreement annexed, marked C.

And your orator further charges, that said Cleft Ledge Granite Company never had one cent of actual capital paid in as capital stock of said corporation; that the same was a mere fiction, got up to cheat and defraud the public; that said stock never had, or could have, any real value; and said certificates of stock were false, feigned, and fraudulent, all well known to the said Daniels and Fales, at the time they made said several assertions and assurances concerning said stock and said company; and said Daniels and Fales well knew said assertions and assurances were wholly and essentially false, and made the same to cheat and defraud your orator.

And your orator believes, and therefore charges, that, in order to secure the title which your orator's deed conveyed to said Daniels, to his own and said Fales's future benefit, and to bewilder your orator, and

prevent him from causing said title to be annulled by our courts of law; for the many frauds heretofore set forth, the said Daniels, on the tenth day of said December, did make and execute a mortgage deed of said land to one Elisha F. Fales, of said Wrentham, trader, and a citizen of said Commonwealth of Massachusetts, and a brother of said Joseph J. Fales, said mortgage appearing to secure the payment of a note from said Daniels to said Elisha F. Fales, of even date of said mortgage, for the sum of $1765, without interest; a copy of which mortgage being hereto annexed, your orator prays to make a part of this his bill of complaint; and for the same purpose, on the ninth day of October, 1837, the said Daniels made and executed one other mortgage deed of said land to one Samuel B. Scott, of said Franklin, trader, and then a copartner in trade *with*, and a brother-in-law *of*, said Daniels, and a citizen of said Commonwealth of Massachusetts, ostensibly to secure to said Scott the payment of a note from said Daniels to said Scott for the sum of $4200, dated the same day of said last mentioned mortgage; a copy of said last mentioned mortgage being annexed, and marked E, your orator prays to make the same a part of this his bill of complaint.

And your orator believes, and therefore charges, that the said Elisha F. Fales and Scott did connive and conspire *with*, and lend themselves *to*, the said Daniels and Joseph J. Fales, to enable them to carry out more successfully their nefarious plans of fraud upon your orator, and did receive from said Daniels said notes and mortgages with a full knowledge of all the frauds of the Daniels and Joseph J. Fales, heretofore set forth, without any consideration passing or moving from them, or either of them, to said Daniels; and that said notes and mortgages were false, feigned, and fraudulent at the time, and ever since well known to be so by all the parties to the same, as well as the said Joseph J. Fales, and made for the purposes aforesaid.

Your orator therefore prays, that said Elisha F. Fales and Samuel B. Scott be made parties defendant with the said Daniels and said Joseph J. Fales, to this your orator's bill of complaint.

Yet now, so it is, may it please your honors, and your orator further distinctly charges, that, although at the times of said several transactions, and when the same were consummated, said Cleft Ledge Granite Company stock was not worth one cent per share, but was completely worthless, and never was, or could be, worth any thing, and was, at that time, well known to all of said defendants.

And although by said contract or agreement between said Daniels and your orator, said Daniels bound himself to pay your orator six thousand dollars for said land in said stock, at the price per share that should have been paid in for said shares, when your orator's deed of said land should be given to said Daniels, and, in fact, not one cent had been paid in for said shares at the time said deed was given by your orator to said Daniels, and your orator received said shares at $25 per share, and no other consideration of said Daniels for his said deed.

And, although such gross and palpable frauds have been practised upon your orator, by said defendants Daniels and Joseph J. Fales, in

regard to said certificates of stock, and the value of said stock, and that he was by said defendants deluded and induced to receive the same at their nominal value, in consideration for said deed, upon his implicit faith, in the truth of said several false and deceptive statements, assertions, and assurances of said defendants Daniels and Joseph J. Fales, all which was well known to said defendants.

And although, by misplacing confidence in said assertions and assurances of said Daniels and Joseph J. Fales, your orator has parted with all his property, without any good or valuable consideration, and was made to believe, by said false assertions and assurances, that he was receiving a fair and valuable consideration for his said deed, when in fact he was consummating an act which sealed his own ruin; all which was well known to the defendants Daniels and Joseph J. Fales.

And although said Daniels has made said notes and mortgages, and thereby intended to incumber said land, for the future benefit of himself and said other defendants, and, immediately upon receiving your orator's said deed, entered upon said land, and has ever since enjoyed all the profits of the same to your orator's exclusion, and has cut off and sold large quantities of wood and timber from said land, to the great damage and waste of the same.

Yet so it is, may it please your honor, that the said Daniels and Joseph J. Fales, although distinctly urged and requested so to do, as your orator distinctly charges, have hitherto refused, and still do distinctly refuse, to afford your orator any relief in the premises.

And distinctly, as your orator charges, do said Daniels and Joseph J. Fales refuse to pay your orator, in money, the nominal price of said worthless certificates of stock, and interest upon the same, from the time your orator received the same, in lieu of money.

Or to discharge said land from said mortgages, and reconvey to your orator the same, and pay him a fair price for the rent, and strip, and waste, aforesaid.

All which matters, doings, and things, are, as your orator charges, against equity and good conscience, and in gross violation of the just rights of your orator.

To the end, therefore, that said defendants may, if they can, shew why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer. That is to say:

1st. Whether the defendants, Daniels and Joseph J. Fales, or either of them, ever owned any stock in said "Cleft Ledge Granite Company?" If yea, of whom did they buy all said stock; what price did they pay, and in what articles was said price paid?

2d. Whether any sums of money, or other property, had ever been paid into said company, by the stockholders, previous to December 8,

A. D. 1836? If yea, what individual stockholder paid in any thing; what was paid in; to whom was any thing paid, as treasurer or receiver for said corporation; and when was it paid; of what did the capital stock of said corporation consist, from the 19th of November to the 8th of December, A. D. 1836?

3d. Whether the defendants, Daniels or Joseph J. Fales, ever represented to the plaintiff, or any one else, that the stock of said company was worth its nominal value in cash in Boston, or worth more than any Boston bank stock?

4th. Whether the defendants, Daniels and Joseph J. Fales, or either, represented to the plaintiffs, or any one else, in the month of November, 1836, or at any other time, that the stock of said corporation would pay a handsome dividend upon its nominal value the next spring, or any thing of like import?

5th. Whether the defendants, Daniels and Joseph J. Fales, or either, ever represented to plaintiff, or any one else, that said company owned a brig, and other vessels, which they kept employed in carrying stone to markets, and that said company wanted to employ plaintiff to take care of, or look after, their navigation; or that said company wanted to employ the plaintiff to sail their brig, and sell her cargoes of stone; or any thing to that amount?

6th. Whether the defendants, Daniels and Joseph J. Fales, or either, ever represented to plaintiff, or any one else, that said company had an agent by the name of Bates, at a salary of $1500 per year, and a clerk, and a great number of hands employed in getting out work to complete a contract with the United States for $50,000.

7th. Whether the defendants, Daniels and Joseph J. Fales, or either, ever represented to plaintiff, or any one else, that said company had a number of large contracts for furnishing stone for the United States, namely, one for $100,000, and one for furnishing rock for the improvement at Fort Walcott, and also at Portsmouth, New Hampshire, or any thing else to that effect?

8th. Whether there was ever any negotiation concerning eastern land, or land in the State of Maine, in any way connected with the purchase of said stock, as between the defendants, Daniels and Joseph J. Fales, or between them, or either of them, and some other contracting party? If yea, what eastern land was it, with whom was said negotiation, and what the whole transaction?

9th. Whether Joseph J. Fales has now, or ever had, an equitable or any other interest, in the land deeded by plaintiff to defendant Daniels? If yea, what was that interest?

10th. Whether defendant Daniels ever paid defendant Joseph J. Fales any thing; and if any thing, how much, and what, for the certificates of stock put by plaintiff to defendant Daniels?

11th. Whether defendant Daniels ever gave defendant Elisha F. Fales a note for said sum of $1765? If yea, what was the original consideration for said note? Is any thing now due upon said note; has

any thing been paid, how much now due, how much been paid, when, and how paid?

12th. Whether defendant Daniels ever gave defendant Scott a note for said sum of $4200? If yea, what was the *original* consideration for said note? Is any thing now due upon said note, has any thing been paid, how much has been paid, when paid, and how paid; how much is now due?

May it please your honors to grant your honors' writ of subpœna, directed to said Daniels, and the said Joseph J. Fales, and the said Elisha F. Fales, and the said Scott, commanding them that, at a day certain, they appear in your honors' court, and then and there, on their several and respective corporal oaths, full, true, direct, and perfect answers make, to all and several the respective charges and allegations in your orator's bill of complaint set forth; and that the said Daniels and Joseph J. Fales may be decreed to pay your orator six thousand dollars, and interest upon the same sum, since the 8th day of December, A. D. 1836.

Or that they be decreed to procure said mortgages upon said land to be discharged and cancelled, and that said Daniels reconvey said land to your orator free from all incumbrances, and pay your orator just and equitable rent and damage for the use of said land, and strip and waste committed by him upon the same.

And that said Elisha F. Fales, and said Scott, may be decreed to cancel, give up, and discharge said notes and mortgages respectively holden by them.

And that each of said parties defendant may be enjoined not to cut any more trees standing upon said land, or commit any other waste thereon, or sell and convey, or in any way alienate any interest or title either of said defendants now have in said land during the pendency of this your orator's bill.

And that a receiver of the rents and profits of said land be appointed during the pendency of this bill. And that such other relief may be granted as to your honors may seem meet and equitable.

September 15th, 1842. SAMUEL WARNER.

JONATHAN P. BISHOP, *Solicitor in Chancery*.

NOTE.—The defendants, Daniels and Joseph J. Fales, are required to answer the interrogatories, numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. And the defendants, Daniels and Elisha F. Fales, are required to answer interrogatory numbered 11. And the defendants, Daniels and Scott, are required to answer interrogatory, numbered 12.

For jurat, see errata.

[Copy A.]

Know all men by these presents, that I, Samuel Warner, of Wrentham, in the county of Norfolk, and Commonwealth of Massachusetts, gentleman, in consideration of six thousand dollars paid by Adams Dan-

iels, of the city of Boston, in the Commonwealth of Massachusetts, merchant, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Daniels, a certain tract of land in said Wrentham, containing by estimation about one hundred and ten acres, be the same more or less, commonly called the Silk Grass and Low Ground farm, with all the buildings thereon standing, situated on the westerly side of the road leading from the Worcester road to the Uncas pond, so called, bounded easterly on the last mentioned road, southerly on land belonging lately to the heirs of Joseph Whiting, deceased, westerly on the land of said heirs, and northerly on the Worcester road aforesaid; for a more particular description of the boundaries, reference may be had to the description of the premises in a deed from Jonathan Adams to the said Warner, dated September twenty-eighth, 1822, and recorded in the registry for the county of Norfolk, book 64, page 270; and also the description of about one acre and a half in a deed from Jarius Whiting, dated March twenty-sixth, 1835.

Also, one other tract of land in said Wrentham, called the Oxbow Meadow, lying on both sides of the Mill brook, containing about fifteen acres, be the same more or less, bounded northerly and easterly on land of the late Nathaniel Ware, deceased, southerly by land of George Hawes, and westerly by land of Eliphalet Whiting.

Also, one other tract of land in said Wrentham, containing by estimation fifteen acres, be the same more or less, with the buildings thereon standing, being the same lot which Eliphalet Whiting conveyed to Jonathan Adams, April thirteenth, 1818, and recorded in the registry of deeds for the county of Norfolk, book 55, page 251, and lying on the northerly side of the road leading from the Eagle factory, so called, to Worcester, and is bounded as follows: Beginning on the northerly side of the said road, at a post for a corner opposite the north corner of said factory building, and the southerly corner of said factory company's land; and from thence, bounded southerly on said road from said corner, till it comes to a post, marked, standing about ten feet east of the bridge over the Duck Pond brook; thence, from said post a straight line to a stake on a ridge, and the same course to a decayed maple tree on the south side of Mill brook; and thence bounded by the middle of the brook easterly going up stream, till it comes to land lately belonging to the Eagle Manufacturing Company; and from thence bounded easterly as the fence now stands on said land, lately owned by said company, to the first mentioned corner.

Also, fourteen-thirtieth parts of a certain lot of land, called the Cider Mill lot, containing three-quarters of an acre, with a cider mill thereon, and bounded as described in a deed from Daniel Whiting to the said Warner, dated September twenty-fifth, 1830, and entered with Norfolk deeds, lib. 95, fol. 56, or however otherwise any of the above parcels of land may be reputed to be bounded, and all subject to such rights as the public or any individuals may have in lands, or rights of way, and in the use of the water.

To have and to hold the above granted premises, with the privileges

135.

and appurtenances thereto belonging, to him, the said Adams Daniels, his heirs and assigns, to his and their use and behoof forever; and I, the said Samuel Warner, for myself and my heirs, executors, and administrators, do covenant with the Adams Daniels, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises, that they are free of all incumbrances, that I have good right to sell and convey the same to the said Adams Daniels as aforesaid, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Adams Daniels, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Samuel Warner, and Sarah Ann Warner, wife of the said Samuel, hereby relinquishing all right of dower in the premises, have hereunto set our hands and seals, this eighth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

SAMUEL WARNER, [L. S.]
SARAH ANN WARNER. [L. S.]

Executed and delivered in presence of us—
SAMUEL B. SCOTT,
JOSIAH J. FISKE.

COMMONWEALTH OF MASSACHUSETTS,
Norfolk, ss:

December 8, 1836. Then personally appeared the above named Samuel Warner, acknowledged the above instrument to be his free act and deed, before me,

JOSIAH J. FISKE,
Justice of the peace.

December 9, 1836. Received, entered, and examined by
ENOS FOORD, *Register.*

Certificate.

Copy. [Copy B.]

Cleft Ledge Granite Company, capital stock two hundred thousand dollars, in eight thousand shares, of twenty-five dollars each certificate. No. Shares.

Be it known, that Joseph J. Fales is entitled to shares, in the Cleft Ledge Granite Company, numbered from to inclusive, with all the rights thereof, and subject to the assessments and conditions provided for in the act of incorporation and by-laws of the company, transferable by endorsement. Recorded in the books of the company, by the said Fales, or his legal representatives.

In witness whereof, the signatures of the president and treasurer, and the corporate seal of said company are hereto affixed, this day of , A. D. 183 .

[L. S.]

GEORGE ODIORNE, *President.*
THEO. BAKER, *Treasurer.*

[C.]

Know all men by these presents, that we, Samuel Warner, of Wrentham, in the county of Norfolk, and State of Massachusetts, of the first part, and Adams Daniels, of Boston, in the county of Suffolk, and State aforesaid, of the second part, are each respectively bound and holden, the one party to the other, in the sum of two thousand dollars, to be paid to him, the said Warner, his heirs, executors, and assigns; to which payment well and truly to be made, we do respectively bind ourselves, our executors, administrators, or assigns, firmly by these presents. Sealed with our seals, and dated this twenty-eighth day of November, eighteen hundred and thirty-six.

The conditions of this obligation are such, that whereas said Warner offers for sale his whole real estate, situated in Wrentham and Franklin, Norfolk county, being his homestead premises, with all the buildings thereon. Also, a certain tract of meadow land, near Ware's mills, (so called;) also, a certain tract of land northwest of the Eagle mill, (so called,) together with fourteen-thirtieths parts of a certain tract of land with cider mill thereon, situated in Franklin, Norfolk county, near the house of Samuel Cleveland, the whole supposed to contain one hundred and thirty acres, and for bounds, and more particular description, reference to be had to certain deeds from Jona. Adams, Daniel Whiting, and Jarius Whiting, to said Warner, and has agreed to sell the same to the said Daniels for six thousand dollars, to be paid for by said Daniels, in shares of the capital stock of the Cleft Ledge Granite Company, at the price per share which has been paid in for said shares, when the deed is given.

Now, the said Warner guaranties, on the fulfilment of the above conditions by the said Daniels, within fifteen days from this date, to give said Daniels a good and satisfactory title of the aforesaid premises, and to give said Daniels, or assigns, peaceable possession of the same, on the first day of April, A. D. 1837, in as good condition as the same now is, (reasonable use, fire, and other reasonable causes excepted.) It is further agreed by the parties, that the said Warner, shall assign to the said Daniels, all his interest in an unexpired policy of insurance from the Norfolk Mutual Insurance Company.

Also, that all the fixtures in and about the premises, (except one Franklin stove,) to wit, buckets, cranes, pumps, fencing stuff, &c., &c.; also, all the manures which is now, or may hereafter be made, on the premises, shall be included in the above sale to said Daniels, and shall all be left by said Warner, and remain the property of said Daniels. It is further agreed by the parties, that said Warner may cut eight cords of wood on the premises, for his own use, the ensuing winter, to be cut in a prudent manner, without strip or waste, by said Warner. Also, said Warner shall have the right to occupy the northeast half of the house, with the Hall building, together with one-half of the barn and out buildings, until the twentieth of April, 1837, if for said Warner's convenience, before moving wholly from the premises.

It is further agreed by the parties, that said Daniels shall indemnify and see said Warner harmless from all liability, arising out of a certain trust note given by said Warner to the Norfolk Mutual Fire Insurance Company, in connexion with the before mentioned policy, which is to be assigned to said Daniels by said Warner.

And the said Daniels hereby agrees to purchase the before mentioned premises and property, on the conditions before mentioned, within the time before mentioned.

Provided, both parties to this contract shall well and truly perform on their parts, respectively, the agreements herein before mentioned and set forth, this obligation shall be void, otherwise to remain in full force and virtue.

ADAMS DANIELS, [L. S.]
SAMUEL WARNER. [L. S.]

Witness for Samuel Warner—
AUGUSTUS T. NEWELL.

Witness for Adams Daniels—
AUGUSTUS T. NEWELL.

Copy.

[D.]

Know all men by these presents, that I, Adams Daniels, of Boston, in the county of Suffolk, and State of Massachusetts, merchant, in consideration of seventeen hundred and sixty-five dollars, paid by Elisha F. Fales, of Boston, county and State aforesaid, merchant, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said Fales, a certain tract of land, situated in Wrentham, county of Norfolk, with all the buildings thereon standing, being the same premises which I bought of Samuel Warner by deed, bearing date December eighth, 1836, for a more particular description of which reference may be had to said deed, recorded in Norfolk registry of deeds. To have and to hold the aforegranted premises to the said Fales, his heirs and assigns, to his and their use and behoof, forever. And I do covenant with the said Fales, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances. That I have good right to sell and convey the same to the said Fales, and that I will warrant and defend the same to the said Fales, his heirs and assigns, forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said Adams Daniels, or his heirs, executors, or administrators, pay to the said Elisha F., his heirs, executors, administrators, or assigns, the sum of seventeen hundred sixty-five dollars in one year without interest, then this deed, as also a certain note bearing even date with these presents, given by the said Daniels to the said Fales, conditioned to pay the same sum, at the time aforesaid, shall both be void, otherwise shall remain in full force.

In witness whereof, I, the said Daniels, have hereunto set my hand

and seal, this tenth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

ADAMS DANIELS. [SEAL.]

Executed and delivered in presence of us—
A. S. WASHBURN,
DAVID WILDER.

SUFFOLK, *ss:*

December 10, *A. D.* 1836.

Then personally appeared the above named Adams Daniels, and acknowledged the above instrument to be his free act and deed.
Before me. DAVID WILDER,
Justice of the peace throughout the Commonwealth.

[E.]

Know all men by these presents, that I, Adams Daniels, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, in consideration of four thousand two hundred dollars, paid by Samuel B. Scott, of Franklin, in the county of Norfolk, and Commonwealth aforesaid, trader, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Scott a certain tract of land lying in Wrentham, in said county of Norfolk, containing, by estimation, about one hundred and ten acres, be the same more or less, commonly called the silk grass and corn ground farm, with all the buildings thereon standing, situated on the westerly side of the road leading from the Worcester road to the Uncas pond, so called. Also, one other tract of land in said Wrentham, called the Oxbow meadow, lying on both sides of the Mill brook, containing about fifteen acres, be the same more or less.

Also, one other tract of land in said Wrentham, containing, by estimation, fifteen acres, be the same more or less, lying on the northerly side of the road leading from the Eagle Factory, so called, to Worcester. Also, fourteen-thirtieth parts of a lot of land called the Cider Mill lot, containing three-quarters of an acre, with a cider mill thereon standing, being in Franklin, in said county of Norfolk, near the house of the late George P. Cleaveland. For a more particular description of the above premises, also the boundaries, reference may be had to a deed from Samuel Warner to the said Daniels, dated December eighth, A. D. 1836, and recorded in the registry for the county of Norfolk, lib. 113, fol. 38; or however any of the above pieces of land may be bounded, or reputed to be bounded, and all subject to such rights as the public or any individual may have in roads, or rights of way, and in the use of the water.

To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Samuel B. Scott, his heirs and assigns, to his use and behoof forever.

And I, the said Adams Daniels, for myself, my heirs, executors, and

administrators, do covenant with the said Samuel B. Scott, his heirs and assigns, that I am lawfully seized in fee of the afore granted premises; that I have good right to sell and convey the same to the said Samuel B. Scott, as aforesaid; and that I, and my heirs, executors, and administrators, shall warrant and defend the same to the said Scott, his heirs and assigns, forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said Adams Daniels, his heirs, executors, or administrators, pay to the said Samuel B. Scott, his heirs, executors, administrators, or assigns, the sum of four thousand two hundred dollars in one year from date, then this deed, as also two certain notes, bearing even date with these presents, given by the said Daniels to the said Scott, to pay the same sum and interest at the time aforesaid, shall both be void, otherwise shall remain in full force.

In witness whereof, I, the said Adams Daniels, have hereunto set my hand and seal, this ninth day of October, in the year of our Lord one thousand eight hundred and thirty-seven.

ADAMS DANIELS. [SEAL.]

Executed and delivered in presence of—
MELETIAH EVERETT.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, *ss:*

October 10, *A. D.* 1837.

Then personally appeared the above named Adams Daniels, and acknowledged the above instrument to be his free act and deed, before me.

MELETIAH EVERETT,
Justice of the peace.

To the judges of the circuit court of the United States, within and for the district of Massachusetts.

The answer of Adams Daniels, of Medway, in the county of Norfolk, and Commonwealth of Massachusetts, trader, one of the defendants to a bill of complaint of Samuel Warner, of Providence, in the county of Providence, and State of Rhode Island and Providence Plantations, esquire, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections, and insufficiencies, in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as he, this defendant, is advised is material for him, this defendant, to make answer unto, he, this defendant, answering, saith:

That he admits that the said complainant was, on or about the said nineteenth day of November, A. D. 1836, possessed, in his own right, of the land described in paper marked A, annexed to the said bill of

complaint; but denies that the same was of more than $2,500, or at most $3,000, in value.

The said defendant further saith, in answer to said bill, that, on or about the day above mentioned, he, together with Joseph J. Fales, also mentioned as a defendant in said bill, being at the house of one Henry Fiske, in Wrentham, where they had dined, and, standing out of doors after dinner, a man was riding past who was addressed by said Fiske as Mr. Warner, and introduced as such to this defendant, and proved to be the present plaintiff. The said Fiske then stated to said Fales and this defendant, that said Warner wished to sell his farm, and asked if either of them then wished to buy one. Whereupon this defendant replied, that he would buy a farm if it suited him, and if he could pay for it in his way, or to that effect. And this defendant avers, that this was his first knowledge of the plaintiff or his farm, and that their meeting and the mention of his farm was altogether accidental, and no otherwise than is here stated.

This defendant further answering says, that the said Fiske and this defendant were then invited by the said plaintiff to examine his said farm, and that they spent an hour or two in examining the same; that during the examination of the said farm, (which is the one under controversy,) this defendant stated to the said plaintiff that he had no means of paying for the said farm, except in stock in a certain company called the Cleft Ledge Granite Company.

And this defendant denies that he then had with him, or saw exhibited at that interview, a great number of papers, like paper marked B, annexed to the said bill; but admits that he had one blank certificate, similar to that marked B, which he delivered to said Warner. This defendant further denies, that the certificate of stock, or any certificate, then or any time exhibited to him, the said plaintiff, by the said defendant, or by any one for him, or in his presence, purported that said Cleft Ledge Granite Company had a capital stock, all paid in, of $200,000.

This defendant also denies that at that interview, or at any other interview, he, or any one for him, or in his hearing, or to his knowledge, 'assured the said Warner that said Cleft Ledge Granite Co. stock, or certificates of it, was worth its numerical value in cash in Boston, and that said stock was worth more in Boston market than any Boston bank stock.'

Or, 'that said stock would pay a very handsome dividend the next spring.'

Or, 'that if said company worked their ledge there would be an annual dividend of 100 per cent.'

Or, 'that nothing would induce this defendant to part with said stock if he could not get more.'

Or, 'that the said Fales and this defendant wanted the said land for the silk business.'

Or, 'that the said company owned a fine brig and a number of other vessels.'

Or, 'that the said company wanted to employ a man like the plaintiff to look after their navigation.'

Or, 'that said company wanted to employ the said plaintiff to sail said brig and sell her cargoes.'

Or, 'that they would give or cause the said Warner to make $1,500 a year.'

Or, 'that the said company had in their employ a Col. Bates as agent, at a salary of $1,500 a year, and a vast number of hands employed in getting out stone to complete a contract with the United States Government of $50,000.'

Or, 'that said company had a number of contracts for furnishing stone, particularly one with the United States Government for $100,000.'

Or, 'that the said company had obtained a very important contract with the United States Government to supply stone for the lighthouse, platform, fortifications, and other improvements, at Fort Wolcott.'

Or, 'that the said Bates was negotiating with the said Government agent at Newport, R. I., for another large contract.'

Or, 'that the said company was certain of a very important contract with the said Government to supply stone for the fortifications at Portsmouth, New Hampshire,' as is falsely alleged in the bill. And this defendant further denies, that he, or any other person by his direction or request, or in his behalf, or to his knowledge or belief, ever made any representations to said Warner, or to any other person, of the tenor, or to the purport, or effect, or substance, of any of the matters herein above set forth and denied.

And the said defendant further answering saith, that, at the time of the said interview with the said Warner on his farm, as aforesaid, he was not in search of a farm, nor had he ever known the said Warner, and that the interview was entirely accidental as before stated.

This defendant further answering says, that in August, in A. D. 1835, this defendant purchased about 3,000 acres of land, situated in Maine, for which he gave at the rate of $8 per acre, paying therefor one-fourth in cash, and giving security for the remainder, payable in one, two, and three years; that, in the October previous to this interview with Warner, this defendant had sold three-fourths of this purchase to the said Joseph J. Fales, at cost, taking in payment therefor the said Fales's obligation for the payment of $5,249 thereof in Cleft Ledge Granite Company stock, at the par value, on demand, and the remainder in the notes of the Cleft Ledge Granite Company.

That, at the time of this interview with the said Warner, on the said farm, this defendant held this obligation of the said Fales, and that he informed the said Warner of the fact, and upon taking leave of him, at said time, this defendant put into the hands of said Warner the act of incorporation of said company, the by-laws of the same, a blank certificate of shares in the capital stock, a list of the officers of the company who were to be found in Boston, and the printed report of Charles T. Jackson, M. D., a distinguished geologist, of high reputation for his

science and integrity, and much confided in by the Executive officers and legislatures of the States of Massachusetts and Maine, as this defendant is informed and believes, who had been employed by said Cleft Ledge Company to explore and report the state and condition of their said real estate; a copy of which report this defendant herewith exhibits, and prays leave to refer to the same as part of his answer; which report, this defendant is informed and believes, does exhibit nothing but the truth.

And, at the same time, this defendant stated to the said Warner that he, this defendant, was but little acquainted with the character and value of the said stock; that, with the paper put into his hands, the said Warner could go to Boston and ascertain its value, and, if he saw fit, go to Durham and examine the quarry, and if after that he should think of trading with this defendant, by an exchange of the said farm for the said stock, that the defendant could be found at the Lamb Tavern, in Boston.

This defendant further says, that this interview was, as he thinks, about the last of the week, and that on the then next Friday, the said Warner came to Boston, and put up at the Lamb Tavern; that the said Warner informed this defendant that he had come to town to inquire into the value of the said stock; that this defendant was not then personally acquainted with any of the company aforesaid, except the said Fales; that little or nothing passed between this defendant and the said Warner, until the Saturday evening following, when the said Warner informed this defendant that he was ready to take the stock at par value, provided they could agree upon the price of the farm; that the said Warner told the defendant that he had seen Geo. Odiorne, the president of the said company, and several of its other officers, and that he had satisfied himself with regard to the value of the stock.

That the said Warner then demanded $6,000 for his farm and out lands with certain reservations; that this defendant then offered him $5,000; that after considerable conversation, during which the said Warner represented his said farm to be of great value, that the buildings were worth $3,500 and insured for $2,200, that the farm contained 12 acres of what he called watered land, and leek grass land of great value, and a mill privilege worth $1,000; whereas the said defendant avers that in fact the said buildings were not worth one half of the sum which the said Warner represented them to be worth, but were entirely over insured, and this defendant was subsequently notified by the agents of the insurance company that the said value was inflamed by the representation thereof to the insurance company, and that the policy thereon was for that cause void; the defendant further avers that there was only about seven acres instead of twelve acres of watered land, and that there was no mill privilege on the said land.

This defendant further alleges that finally the said Warner offered to withdraw his reservations as aforesaid, provided this defendant would pay him $6,140, for the said farm and out lands, in stock as aforesaid, which proposition was declined by this defendant; that on the Monday

morning following the said Warner renewed his proposition, which was rejected by the defendant, and the parties separated. Afterwards the plaintiff invited this defendant to ride with him, which was assented to, and during this ride the said Warner again renewed his said proposition.

And this defendant farther avers, that during the course of this time, from the Saturday evening until the termination of the said ride on Monday morning, the said Warner had used many arguments to induce this defendant to accede to his proposition; that from the said Warner, and during this negotiation, this defendant for the first time learned that the said quarry was first purchased by individuals connected with the said company for about the sum of $4,500, and subsequently sold to the said company for $5,300; that the said Warner there further stated, that the said company had paid for the said quarry in their own notes on time, and that the same must be paid before any dividend could be declared, and that it would take a great while; that the holders of the notes would have to take stock in payment, or the stock must be sacrificed to pay the notes; that the quarry might not prove so good as it now appeared; that he the said Warner had learned many things about the said stock that this defendant did not know; and said Warner then urged the above as reasons why this defendant should accede to his terms for the farm, asserting that although $6,000 might be too much for the farm, that it might also turn out that $25 per share was too much for the stock.

That after returning from the said ride this defendant offered the said Warner $6,000 for the said farm, payable in the said stock, and the same was accepted by the said Warner, and a bond drawn conformably as this defendant supposes to the paper marked C, annexed to the said bill.

And this defendant avers, that during the whole negotiation, the said Fales was not, directly or indirectly, intrusted with this defendant in the said purchase; that this defendant did not ask nor seek, or does he believe that he received, the influence or assistance of said Fales in said transaction.

And the defendant further answering says, that on or about the eighth day of December then following, this defendant, having procured of the said Fales a certificate for two hundred and forty shares in the capital stock of the Cleft Ledge Granite Company, made out in the name of the said Fales, and by him assigned to the said Warner, proceeded with the same to the house of the said Warner, and from thence this defendant and said Warner went to the office of one Josiah J. Fiske, esq., where a deed of the said land was given to this defendant, and he delivered the said Warner the said certificate for two hundred and forty shares of stock; that the said Fiske, while drawing the said deed, undertook to rally the said Warner about selling his farm for granite stock, and the said Warner then and there replied that he knew all about the stock, and that he had told this defendant many things about it which this defendant did not know before.

And this defendant avers that, from that time until August eighteenth, 1841, he received no communication from the said Warner, indicating

a disposition to annul the said contract; and that, previous to that time, to wit, March sixteenth, 1840, the said Warner had parted with (as appears by the books of the said company,) all of the said two hundred and forty shares, with the exception of twenty-four shares.

And the said defendant, further answering, saith, that he has no reason to believe, or does he believe, that the said Cleft Ledge Granite Company was, or is, a mere fiction, got up to cheat and defraud the public, as is alleged in the said bill; but has been credibly informed, and believes, that the said company possess a valuable quarry of granite; that Dr. Charles T. Jackson examined the same in June, A. D. 1836, and reported thereon, as will appear in his report, marked B, herewith exhibited, and to which this defendant prays leave to refer as a part of this his answer; that the said quarry is situated in the town of Durham, in the State of New Hampshire, and that the same was first purchased in the fall of 1835, by four individuals, to wit, G. C. Thompson, James M. Thompson, Newell A. Thompson, and Joseph J. Fales, for the sum of $4,500; that it had never been worked; that about $3,500 was immediately after laid out in improvements, in building shops, wharf, opening roads and the quarry; that said individuals had nearly fifty men at work there for some time previous to the said company's purchasing the same; that the quality of the granite had been fully tested before the sale to the said company; that some time previous to June, A. D. 1836, several individuals, who were in no way interested in the purchase of the quarry originally, to wit, A. D. Capen, William Messenger, John Sawin, jr., James R. Whipple, William Watson, and Erastus Barber, united with the beforenamed original purchasers in a petition to the Legislature of New Hampshire for an act of incorporation; and, on the eighteenth day of June, they, with their associates, were, by law, duly incorporated under the name of the Cleft Ledge Granite Company; a copy of which law, marked A, this defendant herewith annexes, and prays leave to refer to, as a part of his answer; that said corporation was duly organized thereafter, and, on or about the twenty-fifth day of August, A. D. 1836, concluded a bargain with the said original owners of the said quarry, by which the said company purchased the said quarry for the sum of $53,000, payable, one fourth in thirty days, one fourth in one year, one fourth in two years, and one fourth in three years.

And the said defendant, further answering, says, that it appears from the stock and certificate books of the said company, that the said stock was originally divided into two thousand shares of $100 each; that three hundred and three shares, and no more, of said stock had been issued previous to December seventh, 1836, on which an assessment had been levied and paid of thirty per cent., which assessments, so paid, were duly endorsed on the certificates so issued.

That, on the twenty-eighth day of November, A. D. 1836, it was resolved, by a vote of the stockholders of the said company, to increase the number of shares to eight thousand, and to reduce the par value of the same to $25 per share, and that the original shares, which had been

issued, should be surrendered, and new ones issued at the reduced rate.

That, on the seventh day of December, 1836, (as appears by the books of said company,) the said Joseph J. Fales, then being a holder of seventy-three shares of the said old stock of the said company, on which thirty per cent. had been levied and paid, surrendered the same, and, at the same time, received a certificate of two hundred and forty shares of the new stock in the said company, at $25 per share, and for which he paid in manner following:

Dr. to 240 shares new stock at $25 per share,		$6,000
Cr.		
By 30 per cent. on 73 shares of old stock surrendered,	$2,190	
" endorsed on said Co.'s note, held by Fales,	3,800	
" J. J. Fales's memorandum check for	10	
		6,000

And the said 240 shares are the same which were transferred to the said Warner for the said farm, and were purchased of the said Fales by the defendant in the manner following, namely:

Surrendered the said Fales's obligation to deliver said stock to defendant for	5,249
This defendant's note for $751, of which $400 was paid subsequently in cash, and remainder by giving up said Fales's note, bought by defendant of another person,	751
	$6,000

And this defendant further answering saith, he has never mortgaged or otherwise incumbered the said land, for the purpose of bewildering the said Warner, or covering the title to the same, but this defendant admits he did mortgage the said farm on the

18 to Elisha F. Fales, to secure the payment of the sum of $1,765 therein mentioned, which the defendant avers that he at that time justly owed to the said Fales, the same being due said Fales for a final balance between him and this defendant, as former joint copartner in business, upon a final settlement of the copartnership accounts; which sum this defendant afterward paid to the said Fales, and procured from him a legal discharge of said mortgage, long before the filing of the plaintiff's present bill, to wit, on or about the first day of February, A. D. 1842.

And the defendant further admits, that he also mortgaged said farm to one Samuel B. Scott, on the ninth day of October, A. D. 1837, which mortgage this defendant avers, was made to secure the said Scott against certain legal liabilities, which he was then under to cer-

tain creditors of this defendant, which liabilities, amounting to about the sum of forty-two hundred dollars, this defendant afterward removed by paying and taking up the securities on which said Scott was so liable; whereupon said Scott, at this defendant's request, duly and fully discharged said mortgage, long before the filing of the present bill, to wit, on or about the twenty-fifth day of September, A. D. 1841.

And this defendant further answering, denies, that the said Elisha F. Fales, or the said Scott, were in any way or manner conniving or conspiring with, or lending themselves to, this defendant, for the purpose of fraud upon the said Warner; or that the said notes and mortgages were false, feigned, or fraudulent; but affirms that the same were true and honest transactions, and that the said land is, and was, at the filing of the said bill, entirely unincumbered.

And this defendant further answering, denies, that he ever deluded the said Warner, or misrepresented any fact concerning the said stock, or that he made any false or deceptive statement, or that he is in any manner liable or bound to refund to the said Warner the value of the said land, with interest thereon, as claimed in the said bill or any part thereof.

And this defendant further answering saith, in answer to the first interrogatory in said bill, that he did not own any stock in the said Cleft Ledge Granite Company at the time of the purchase of the land aforesaid, nor has he previous to that owned any, unless the obligation of Joseph J. Fales to transfer stock to the amount of $5,249, as before stated, can be considered as owning stock in the said company; that since that period the defendant has owned forty-four shares in the capital stock of the said company; that the price which he paid for the said stock conveyed to Warner was $25 per share, and $5,249 of the purchase money was paid in land, at the price at which it cost this defendant; and the remainder, being $751, was paid for by $400 in cash, and the remainder, by giving up a note of said Fales, which this defendant had bought of another person.

In answer to the second interrogatory the defendant saith:

That whether any sums of money or other property had ever been paid in to said company by the stockholders, previous to December 8th, 1836, is entirely unknown to this defendant, except as he has been told and believes; and this defendant avers that he has been told, and does believe, that money and other property has been paid into the said company in exchange for stock; that the amount of stock issued, and money and other valuable considerations paid in to the said company, on and before the 8th day of December, 1836, he believes to have been substantially as follows:

230 shares of old stock issued, on which assessments had been levied and paid as follows:

20 shares to A. D. Capen, 30 per cent., assessed $200, paid when the assessment was laid, and remainder afterwards -	$1,100
10 shares to A. D. Capen, 30 per cent., assessed and paid by his services as clerk - - - - -	300

10 shares to W. D. Calaham, 30 per cent., assessed and paid one-third in cash down, and remainder in his note, which was taken by J. J. Fales, and endorsed on company's note held by Fales	300
5 shares to E. F. Newton, 30 per cent., assessed and paid in cash	150
10 shares to Eliza Sweet, 30 per cent., assessed and paid in cash	300
36 shares to John Sawin, jr., 30 per cent., assessed and paid in labor, tools, &c.	1,080
8 shares to William Messenger, 30 per cent., assessed and paid in cash	240
131 shares to Fales and Thompson, 30 per cent., assessed and paid by endorsing same on company's note	3,930
240 shares of new stock, at $25 per share, $6,000; paid for by surrendering seventy-three shares of old stock, on which 30 per cent had been paid, $2,190; endorsed on company's note, $3,800; Fales's memorandum check, $10	6,000
	$12,900

That the said payments were made to Peter Harvey, the treasurer of the said company, before the 8th day of December, 1836; that for said two hundred and forty shares, there was paid to said company, as stated before, $2,190, by surrender of seventy-three old shares; endorsement on the company's note, $3,800; and memorandum check, $10.

The above making the whole amount of stock issued to be, on the 8th day of December, 1836—

230 shares, old (assessed)	$6,900
240 " new, $25 per share	6,000
	$12,900

and the whole amount paid in for stock to that period, being an equal sum, to wit: $12,900

In answer to the third interrogatory, this defendant saith, that he never did represent to the said Warner, or to any one else, to his knowledge, that the said stock was worth its numerical value in cash in Boston, or that it was worth more than any Boston bank stock.

In answer to complainant's fourth interrogatory, the defendant saith, that he never did represent to the said Warner, in the month of November, or at any other time, that the stock of said corporation would pay a handsome dividend next spring, or any thing of the like import.

In answer to complainant's fifth interrogatory, this defendant saith, that he did not represent to the said Warner that said company owned a brig, or other vessel, nor any thing of the import there alleged or inquired of; nor did this defendant make such a representation to any one else to his knowledge.

In answer to complainant's sixth interrogatory, the defendant saith, that he did not make any such representation as there inquired of.

In answer to the complainant's seventh interrogatory, the defendant saith that he did not make any such representation as is there inquired of.

In answer to complainant's eighth interrogatory, the defendant saith, that this defendant did sell the said Jos. J. Fales some eastern land, and that it was connected with the purchase of the stock sold to the said Warner. That the negotiation was, in the first place, the purchase, by the defendant, in August, 1835, of one-fourth of lot No. 2, third range of townships situate in Penobscot county, containing about 3,000 acres, at $8 per acre; and the sale of three-fourths of that purchase to J. J. Fales, in October, A. D. 1836, at cost, taking in payment for said land $5,249 in stock in said C. L. G. Company, or rather an obligation from said Fales to convey said stock to that amount, on demand, and the remainder of the purchase money in the notes of the said Cleft Ledge Granite Company.

In answer to complainant's ninth interrogatory, the defendant saith, that J. J. Fales has never had an equitable or other interest, either direct or indirect, in the lands purchased of the complainant.

In answer to complainant's tenth interrogatory, the defendant saith, that he paid the said Fales, for the said certificates of stock, $5,249 in eastern land as aforesaid, at the price which it cost this defendant, to wit, $8 per acre, and interest; and $751, as before stated, to wit, $400 in cash, and the remainder in a note which this defendant purchased of another person against said Fales.

In answer to the complainant's eleventh interrogatory, this defendant saith, that he did give the said Elisha F. Fales a note for said sum of $1,765; that the original consideration for the same, was a balance due the said Fales upon the final settlement of the copartnership account between himself and the said Elisha F.; that both principal and interest was paid on the day the said mortgage was discharged; that nothing is now due on said note, and that the mortgage is and was discharged long previous to the filing of this bill.

In answer to the complainant's twelfth interrogatory, the defendant saith, that he did give the said Scott two notes for the amount of $4,200; that the original consideration for said notes was certain endorsements which the said Scott had made for the accommodation of the defendant, to about the same amount; that those liabilities have all been surrendered to this defendant, and the said mortgage duly cancelled.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed, with his reasonable costs and charges, in his belief, most wrongfully sustained.

ADAMS DANIELS.

FREDERICK W. SAWYER,
Solicitor in chancery.

UNITED STATES OF AMERICA, *Massachusetts, ss:*

BOSTON, *February* 15, 1843.

Personally appeared the above named Adams Daniels, and made oath that the matters and things contained in the above answer, which are stated as of his own knowledge, are true; and that he verily believes those things to be true, which are stated to be matters of belief, opinion, and hearsay. Before me,

GEO. S. HILLARD, *Commissioner*.

Act of incorporation and Dr. Jackson's report omitted.

To the honorable judges of the circuit court within and for the district of Massachusetts.

The answer of Joseph J. Fales, one of the defendants in a certain bill of complaint of Samuel Warner, of Providence, in the State of Rhode Island, against this defendant, together with Adams Daniels, Elisha F. Fales, and Samuel B. Scott.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith:

That he has reason to believe that the said Warner did, on or about the nineteenth day of November, A. D. 1836, own the said farm described in his said bill, but has no reason to believe, nor does this defendant believe, that the said farm is or was worth more than $2,500 or $3,000.

The said defendant further saith, in answer to said bill, that on or about the day abovementioned he, together with Adams Daniels aforesaid, being at the house of one Hiram Fisk, in Wrentham, where they had dined, and standing out of doors after dinner, a man was riding past, who was addressed by said Fisk as Mr. Warner, and introduced as such to this defendant, and proved to be the present plaintiff; the said Fisk then stated to the said Daniels and this defendant, that said Warner wished to sell his farm, and asked if either of them wished to buy one; whereupon the said Daniels replied, that he would buy one if he had anything to pay for it, or something to that effect; and this defendant avers, that this was his first knowledge of the said plaintiff or his farm, and that he was not then in search of a farm, or intending to buy one; and at that interview, nor afterward, does this defendant recollect or believe that he gave the said Warner any indication that he was meditating, or desirous to buy, his or any other farm for the silk business, or any other purpose.

This defendant further answering says, that the said Fisk, Daniels, and this defendant, were then invited by the said plaintiff to examine

his said farm, and that they spent an hour or two in examining the same.

And this defendant denies that he had with him, or saw exhibited at that interview, a great number of papers like paper marked B, annexed to the said bill, and does not remember to have had, and does not believe that he had, any such paper that he exhibited.

This defendant also denies, at that interview, or any other interview, he, or any one for him, or in his hearing, or to his knowledge, "assured the said Warner that said Cleft Ledge Granite Company's stock, or certificates of it, was worth its numerical value in cash in Boston, and that said stock was worth more in Boston market than any Boston bank stock."

Or, 'that said stock would pay a very handsome dividend next spring.'

Or, 'that if said company worked their ledge there would be an annual dividend of 100 per cent.'

Or, 'that nothing would induce this defendant to part with said stock if he could not get more.'

Or, 'that this defendant and the said Daniels wanted the said land for the silk business.'

Or, 'that the said company owned a fine brig and a number of other vessels.'

Or, 'that the said company wanted to employ a man like the plaintiff to look after their navigation.'

Or, 'that said company wanted to employ the said plaintiff to sail said brig and sell her cargoes.'

Or, 'that they would give, or cause the said Warner to make, $1,500 per year.'

Or, 'that the said company had a number of contracts for furnishing stone, particularly one with the United States Government for $100,000.

Or, 'that the said company had obtained a very important contract with the United States Government to supply stone for the light-house, platform, fortifications, and other improvements at Fort Wolcott.'

And this defendant further answering says, that, during the interview at Fisk's, and on the said farm, on the day aforesaid, this defendant had no interest in the examination of the said farm, or in the negotiation, or attempted negotiation, between the said Warner and the said Daniels, for the exchange of the said farm for the said stock; that this defendant was at that time an owner of stock in the said Cleft Ledge Granite Company; was an original purchaser of the quarry; was at the time of this interview a director in the company, and under written contract to deliver the said Daniels, on demand, certificates of stock to the amount of $5,249, for value received.

This defendant further says, that the fact that the said Daniels held the above obligation, and that this defendant was a director in said company, was communicated to the said Warner by the said Daniels; and that several inquiries were addressed to this defendant about the said stock, by the said Daniels and Warner, during this interview.

And this defendant admits that, during that interview, he did state to the said Warner that the said company had in their employ a Colonel Bates as agent, but denies that he said that he had a salary from the company of $1,500; but admits that he might have stated, and probably did state, that he had a salary of $1,200.

This defendant further admits, that he did inform the said Warner, at that interview, that the said company had a clerk, and that they had a large number of hands employed getting out stone to complete a contract with the Government; but denies that he stated that that contract was for the sum of $50,000.

This defendant further says, that at that time the said company were *negotiating* for certain contracts, among which were those for 'furnishing' stone for the light house, platform, fortifications, and other improvements at Fort Walcott, and for the fortifications at Portsmouth, and that the fact that there were such negotiations on foot were duly communicated to the said Warner, in answer to inquiries; but this defendant denies that he stated or gave the said Warner any reason to understand or believe that these, or any *negotiations* for contracts, had ripened into contracts, except one contract with the United States Government for stone at Portsmouth, (N. H.,) for about $15,000.

And this defendant denies that, throughout this interview on the said 19th November, he had any personal interest in the negotiation, or that he, or any other person by his direction, or request, or in his behalf, or to his knowledge, or belief, ever made any representations to said Warner, or to any other person, of the tenor, or to the purport, or effect, or substance, of any of the matters herein contained, above set forth and denied.

And this defendant further admits, that he did assure the said Warner, that several individuals at Newport (R. I.) had bought into the company, but denies that he stated that through their influence any contract had been obtained, or that said Bates was negotiating any contract there.

And this defendant further denies, that he, or any one for him, or in his hearing or presence, assured the said Warner, 'or any other person,' that said company had a capital of $200,000, all paid in by the stockholders, or that this defendant made the said Warner any assurances, or bargained in any way for the said farm; or had then, or since, any interest, direct or indirect, in the purchase of the said farm.

This defendant further answering says, that some few days previous to the 28th day of November, referred to in the said bill of complaint, the said Warner called upon this defendant, at his place of business in Boston, and told this defendant that he had come to town for the purpose of ascertaining the character and value of the said Cleft Ledge Granite Company stock; that he (the said Warner) then requested this defendant to introduce him to some of the officers of the said company, and this defendant so far complied as to introduce him to the president of the said company, George Odiorne, esq., and to the clerk, Mr. G. C. Thompson.

And this defendant denies that he had any interest in the bond that was entered into between the said Daniels and Warner on the 28th day of November, direct or indirect; he denies that he took any special interest in the trade between the said Daniels and the said Warner, or that this defendant made any representations about the quarry, or the capital of the company, or *its* property, or the officers of the company, or the contracts entered into and negotiating for, which were not, one and all, according to the fact.

And this defendant, further answering, denies that the said Cleft Ledge Granite Company was a mere fiction, got up to cheat and defraud the public, as is alleged in the said bill; but avers, that at the time of this transaction between the said Warner and the said Daniels, in November, A. D. 1836, the said company were in possession of a quarry, situated in Durham, New Hampshire, of valuable granite; that the said quarry had originally been purchased by this defendant and three others, in the year 1835, for the sum of $4,500; that the same had then never been worked or proved, and that this defendant, with his associates, put on a large number of workmen, fully tested the quality of the granite, built a wharf, a large blacksmith's shop, and a shop for hammering granite, and made sundry other improvements, at an expense of about $3,000 or $3,500.

That, in the spring of 1836, several individuals became desirous of taking an interest in the said quarry, and, some time previous to June, 1836, A. D. Capen, Wm. Messenger, John Sawin, jr., James K. Whipple, Wm. Watson, and Erastus Barber, united with this defendant and his associates in the original purchase of the said quarry, to wit, N. A. Thompson, J. M. Thompson, and G. C. Thompson, in an application to the Legislature of New Hampshire for an act of incorporation, under the name of the Cleft Ledge Granite Company, which was granted; a copy of which act of incorporation is hereto annexed, marked A, and this defendant prays leave to refer to it as part of his answer; that said corporation was duly organized thereafterwards, and on or about the 25th day of August concluded a bargain with this defendant and his associates, by which the said company purchased the said quarry of this defendant and his associates for the sum of $53,000, payable one quarter in 30 days, one quarter in one year, one quarter in two years, and one quarter in three years; that, before this bargain had been concluded, this said corporation had procured Charles T. Jackson, M. D., an eminent geologist, to make a survey of the said quarry, and to report thereon; which report is hereto annexed as a part of this answer, and marked B.

And this defendant further says, that he was a director in the said company from the time of its organization to the time of the transaction complained of in the said bill, and distinctly denies that there was any thing in the origin, organization, or conduct of the corporation, designed or calculated to deceive or defraud the public.

This defendant further answering says, that, at the time of the transaction complained of, the said company were working the said

quarry; that the said company was under contract to furnish certain stone for the United States Government at Portsmouth; that stone were got out and furnished on that contract, and also a quantity was shipped to New York, for all which several thousand dollars were received; that a large quantity of stone was got out, which was subsequently attached by a creditor of the company, and sold.

And this defendant, further answering, denies that he ever mortgaged, or was interested, in any way or manner, in the mortgaging the said Warner farm to Elisha F. Fales and Samuel B. Scott, or either of them, or that he ever connived with them, or either of them, to defraud the said Warner, or to cover the title to the said land.

This defendant further denies that he has ever entered upon, or taken possession of, the said land, or in any way participated in the rents or profits of it, or that he has ever had any negotiation, direct or indirect, with the said Warner about the said farm, or made any false or deceptive statements, or that he is, in any way or manner, liable or bound to refund to the said Warner the value of the said lands, with interest thereon, as claimed in his said bill, or any part thereof. This defendant saith, that the original price of the said stock was $100 per share, but that, in November, '36, the price of shares was reduced to $25; that the first assessment, on the original shares, was $25 per share, and the second assessment, $5 per share; and that the first assessment on all shares were required to be, and were, paid in before the shares were issued, and that the shares so issued were liable for all future assessments.

And this defendant, in answer to the plaintiff's first interrogatory, saith, that, on the 28th day of November, 1836, this defendant owned 73 shares of old stock in the said company, and no more, on which he had paid an assessment of $30 on each share; that, on the 7th day of December, 1836, this defendant surrendered those 73 shares (old) and took a certificate for 240 shares, (new,) paying for the said 240 shares $25 per share, or, for the whole, - - - - $6,000
in manner following, to wit:

73 shares (old) surrendered, 30 per cent. paid -	$2,190	
Indorsed on the said company's note to this defendant - - - - -	3,800	
This defendant's memorandum check for - -	10	
		$6,000

This 240 shares of stock, being all the stock which this defendant then owned in said company, was duly assigned by this defendant to Samuel Warner, at the request of the said Daniels, and the said Daniels paid this defendant for the said stock six thousand dollars - $6,000
in manner following:

This defendant's obligation surrendered - -	$5,249	
The said Daniel's promissory note - -	751	
Making in all - - - - - -		$6,000

In answer to the second interrogatory, this defendant saith, that the amount of stock issued, and money and other valuable considerations

And this defendant denies that he had any interest in the bond that was entered into between the said Daniels and Warner on the 28th day of November, direct or indirect; he denies that he took any special interest in the trade between the said Daniels and the said Warner, or that this defendant made any representations about the quarry, or the capital of the company, or *its* property, or the officers of the company, or the contracts entered into and negotiating for, which were not, one and all, according to the fact.

And this defendant, further answering, denies that the said Cleft Ledge Granite Company was a mere fiction, got up to cheat and defraud the public, as is alleged in the said bill; but avers, that at the time of this transaction between the said Warner and the said Daniels, in November, A. D. 1836, the said company were in possession of a quarry, situated in Durham, New Hampshire, of valuable granite; that the said quarry had originally been purchased by this defendant and three others, in the year 1835, for the sum of $4,500; that the same had then never been worked or proved, and that this defendant, with his associates, put on a large number of workmen, fully tested the quality of the granite, built a wharf, a large blacksmith's shop, and a shop for hammering granite, and made sundry other improvements, at an expense of about $3,000 or $3,500.

That, in the spring of 1836, several individuals became desirous of taking an interest in the said quarry, and, some time previous to June, 1836, A. D. Capen, Wm. Messenger, John Sawin, jr., James K. Whipple, Wm. Watson, and Erastus Barber, united with this defendant and his associates in the original purchase of the said quarry, to wit, N. A. Thompson, J. M. Thompson, and G. C. Thompson, in an application to the Legislature of New Hampshire for an act of incorporation, under the name of the Cleft Ledge Granite Company, which was granted; a copy of which act of incorporation is hereto annexed, marked A, and this defendant prays leave to refer to it as part of his answer; that said corporation was duly organized thereafterwards, and on or about the 25th day of August concluded a bargain with this defendant and his associates, by which the said company purchased the said quarry of this defendant and his associates for the sum of $53,000, payable one quarter in 30 days, one quarter in one year, one quarter in two years, and one quarter in three years; that, before this bargain had been concluded, this said corporation had procured Charles T. Jackson, M. D., an eminent geologist, to make a survey of the said quarry, and to report thereon; which report is hereto annexed as a part of this answer, and marked B.

And this defendant further says, that he was a director in the said company from the time of its organization to the time of the transaction complained of in the said bill, and distinctly denies that there was any thing in the origin, organization, or conduct of the corporation, designed or calculated to deceive or defraud the public.

This defendant further answering says, that, at the time of the transaction complained of, the said company were working the said

quarry; that the said company was under contract to furnish certain stone for the United States Government at Portsmouth; that stone were got out and furnished on that contract, and also a quantity was shipped to New York, for all which several thousand dollars were received; that a large quantity of stone was got out, which was subsequently attached by a creditor of the company, and sold.

And this defendant, further answering, denies that he ever mortgaged, or was interested, in any way or manner, in the mortgaging the said Warner farm to Elisha F. Fales and Samuel B. Scott, or either of them, or that he ever connived with them, or either of them, to defraud the said Warner, or to cover the title to the said land.

This defendant further denies that he has ever entered upon, or taken possession of, the said land, or in any way participated in the rents or profits of it, or that he has ever had any negotiation, direct or indirect, with the said Warner about the said farm, or made any false or deceptive statements, or that he is, in any way or manner, liable or bound to refund to the said Warner the value of the said lands, with interest thereon, as claimed in his said bill, or any part thereof. This defendant saith, that the original price of the said stock was $100 per share, but that, in November, '36, the price of shares was reduced to $25; that the first assessment, on the original shares, was $25 per share, and the second assessment, $5 per share; and that the first assessment on all shares were required to be, and were, paid in before the shares were issued, and that the shares so issued were liable for all future assessments.

And this defendant, in answer to the plaintiff's first interrogatory, saith, that, on the 28th day of November, 1836, this defendant owned 73 shares of old stock in the said company, and no more, on which he had paid an assessment of $30 on each share; that, on the 7th day of December, 1836, this defendant surrendered those 73 shares (old) and took a certificate for 240 shares, (new,) paying for the said 240 shares $25 per share, or, for the whole, - - - - - $6,000 in manner following, to wit:

73 shares (old) surrendered, 30 per cent. paid -	$2,190	
Indorsed on the said company's note to this defendant - - - - -	3,800	
This defendant's memorandum check for - -	10	
		$6,000

This 240 shares of stock, being all the stock which this defendant then owned in said company, was duly assigned by this defendant to Samuel Warner, at the request of the said Daniels, and the said Daniels paid this defendant for the said stock six thousand dollars - $6,000 in manner following:

This defendant's obligation surrendered - -	$5,249	
The said Daniel's promissory note - -	751	
Making in all - - - - - -		$6,000

In answer to the second interrogatory, this defendant saith, that the amount of stock issued, and money and other valuable considerations

paid in to the said company, on and before the 8th day of December, 1836, he believes to have been substantially as follows:

230 shares of old stock issued, on which assessments had been levied and paid as follows:

20	shares to A. D. Capron, 30 per cent. assessed; $200 paid when the assessment was laid, and remainder afterwards - - - - - -	$600
10	shares to A. D. Capron, (30 per cent.) paid by his services as clerk for the company and directors - -	300
10	shares to W. D. Callahan, (30 per cent. assessment,) about one-third paid in cash down, and remainder in his note, which was accounted to the company for by endorsing same on the company's note - -	300
5	shares to E. F. Newton, (30 per cent.) paid in cash down - - - - - -	150
10	shares to Eliza Sweet, (30 per cent.) " " -	300
36	" John Sawin, jr., (30 per cent.) paid in labor, carts, &c. - - - - - -	1,080
8	shares to William Messenger, (30 per cent.) paid in cash - - - - - - -	240
131	shares to Fales and Thompson, (30 per cent.) paid by indorsing the same on the company's note to them -	3,930
240	shares new stock to J. J. Fales, at $25 per share - Paid for by surrendering seventy-three old shares, 30 per cent. $2,190, remainder paid by indorsing $3,800 on the company's note, and giving this defendant's memorandum check for $10 - - - 6,000	6,000
		$12,900

That the said payments were made to Peter Harvey, who was then treasurer of the said company; that the capital stock consisted of the payments as aforesaid and the said quarry at Durham.

In answer to the third interrogatory, this defendant saith:

That he never did represent to the said Warner, or to any one else, to his knowledge, that the said stock was worth its nominal value in cash in Boston, or that it was worth more than any Boston bank stock.

In answer to the fourth interrogatory, this defendant saith:

That he never did represent to the said Warner in the month of November, or at any other time, that the stock of said corporation would pay a handsome dividend the next spring; but this defendant, in answer to this and the preceding interrogatory, admits that, at the time of this transaction between Warner and Daniels, this defendant entertained very sanguine opinions with regard to the final success and prosperous operations of the company; and while he avers that he stated nothing for a fact which was not precisely as represented, yet, with regard to the expression of his opinion as to the real value of the stock, and the dividend that might be expected, this defendant might, and probably did, give it as his opinion, that the stock was worth its nomi-

nal value, and that it would pay a handsome dividend; and this defendant avers, that the said Warner, after making certain estimates, expressed the same opinion.

In answer to complainant's fifth interrogatory, this defendant saith:

That he did not represent to the said Warner, that the said company owned a brig, or other vessel, nor any thing of the import there alleged or inquired of, nor did this defendant ever make any such representations to any other person; but this defendant avers that, after this transaction with Daniels, the said Warner applied, or interceded, for the situation of agent of the company; and that some conversation then took place about the company's buying a vessel for the transportation of their granite, and that the said Warner should sail her; this was nearly a year after the sale of said farm.

In answer to the sixth interrogatory, the said defendant saith:

That he did inform the said Warner that the said company had an agent, by the name of Bates, and a clerk, and a great number of hands at work getting out stone to complete a contract, but denies that he stated that said Bates had a salary of $1,500, or that said contract was for $50,000; but did say that the salary of the said Bates was $1,200, and the amount of the said contract 10 or 15,000 dollars; all of which was true.

In answer to the seventh interrogatory this defendant saith:

That he did not make any such representations as is there inquired of, but admits that he did state that the said company were negotiating for certain contracts, among which was the one for furnishing stone for Fort Walcott; all of which was true.

In answer to the eighth interrogatory this defendant saith:

That he did purchase of the said Daniels about 2,250 acres of land, situated in lot No. 2, third range of townships in Penobscot county, Maine; that this defendant gave the said Daniels $8 per acre for the said land, and interest from the date of said Daniels' purchase, and paid him for the same $5,249 in stock, or his obligation to deliver stock in the Cleft Ledge Granite Company, and the remainder in the notes of the said company.

This defendant further answering says, that the said land was a valuable tract, and he then thought, and still thinks, that the full amount of the said purchase money can be realized from the same, and that large sums have been realized from it already.

In answer to the ninth interrogatory this defendant saith, that he never had an equitable, or any other interest, in the lands conveyed by the said Warner to the said Daniels.

In answer to the tenth interrogatory this defendant saith, that the said Daniels did pay this defendant for the said 240 shares of stock—

In land at cost - - - - -	$5,249
In cash - - - - -	400
In this defendant's note, given up - -	351
	$6,000

This defendant, further answering, represents to this honorable court, that on the day of last past, this defendant petitioned the United States district court within and for the district of Massachusetts, for the benefit of the bankrupt act, and that on the day of last past, he was duly discharged from all his debts, as will appear by papers marked and annexed, and hereby made a part of this bill. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and hereby prays to be hence dismissed, with his reasonable cost and charges in his behalf most wrongfully sustained.

[See errata for oath and signatures.]

March 6th, 1843. Filed at the rules.

Circuit court of the United States. First circuit.

MASSACHUSETTS, *ss:* *In equity.*

The answer of Elisha F. Fales, one of the respondents to the bill of complaint of Samuel Warner, of Providence, in the county of Providence, and State of Rhode Island and Providence Plantation.

This respondent, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and insufficiencies, and other imperfections in said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as he is advised is material and necessary for him to make answer unto, answering, saith:

That he knows not, has never been informed, and therefore cannot say, whether or not said complainant was seized and possessed of the lands mentioned and referred to in said bill of complaint, at the time and in the manner therein set forth; nor whether or not the said respondents, Adams Daniels and Joseph J. Fales, were possessed of certain stock, or certificates purporting to represent stock, of the Cleft Ledge Granite Company, as set forth and particularly mentioned in said bill of complaint, and of the kind and description therein set forth; nor whether or not said Daniels and J. J. Fales, or either, or both of them, ever made the statements, assurances, or representations, to said complainant respecting the value of said stock of said Cleft Ledge Granite Company, or the amount and condition of their capital, and whether the same, or any, and what part thereof, was paid in or not, or respecting said company's property, rights, or credits, or the situation or amount thereof, or respecting their contracts or agents, or any other matter or thing respecting said company, as is particularly and at length set forth in said complainant's bill; nor whether or not said complainant entered into, or signed, any such contract with said Daniels, as is set forth in said bill, or executed or delivered to said Daniels a deed of the lands referred to in said bill of complaint, as is therein set forth; nor whether or not, if such deed were made and delivered to said Daniels, by said complainant, of said land, the same was obtained by said Daniels, or given by

said complainant by reason of the assurances and representations set forth in said bill, respecting said Cleft Ledge Granite Company's stock. But this respondent hath been credibly informed, and verily believes, that said complainant did, some time previous to the tenth day of December, in the year eighteen hundred and thirty-six, sell and convey unto the said Daniels certain lands situate in the towns of Franklin and Wrentham, like unto those referred to in said bill, and which this respondent believes to be the same as those set forth in said bill. But the precise time when said conveyance was made, or for what consideration, or how said consideration was paid, when or by whom, or in what kind of property, or upon what representations or inducements, this respondent, knowing not of his own knowledge, and having never been informed, except by said bill of complaint, cannot state. Neither, for the same reason, can he state what was, at any time, the real value of said stock before referred to, or the situation of said company in every respect.

And this respondent further answering saith, that on or about the tenth day of December, in the year eighteen hundred and thirty-six, the said Daniels did sell and convey, by way of mortgage, to this respondent, certain lands described in said Daniels' said mortgage deed as the same which said Daniels bought of said complainant by deed dated December eighth, 1836, reference being made to said complainant's deed for a more particular description of the premises, which said premises this respondent believes to be the same mentioned and referred to in said bill of complaint; that said mortgage was made to this respondent to secure the payment of a certain promissory note, signed by the said Daniels, for the sum of seventeen hundred and sixty-five dollars, payable in one year from date to this respondent, or his order; that said note and mortgage were both in all respects given bona fide, and for the full, valuable, and adequate consideration therein stated; and this respondent fully and distinctly denies, that said mortgage and note were either, or both of them, given to this respondent by said Daniels, without any valuable consideration therefor, or that the same were given, so far as this respondent knows, or has been informed, except by said bill of complaint, or was concerned in said transaction by said Daniels, in order to secure the title to said lands to the future use of said Daniels or Bates, or either of them, or to bewilder said complainant, or to prevent him from causing said title to be annulled or set aside by the bounds of law, as is in said bill of complaint at length alleged and set forth. But this respondent charges and asserts the truth to be, that said note, and the mortgage to secure the same, were given by said Daniels to this repondent for a true and bona fide debt, which was justly due this respondent from said Daniels, to the full amount of said sum of seventeen hundred sixty-five dollars, said note being made payable without interest, and including face thereof, the interest upon the amount of the debt to the maturity of the note. The consideration of said note was the amount that was found to be due said respondent from the said Daniels for cash lent, and goods sold, upon the settlement of the affairs of the firm of Fales and Daniels, which firm consisted of the said Daniels and

this respondent. And this respondent fully and distinctly denies that he did contrive or conspire in any way or manner with, or lend himself to, the said Daniels or the said J. J. Fales, or either of them, in order to enable them to defraud said complainant. And further denies, that said mortgage, or said note, or either of them, were received by him with a knowledge of any or all the frauds charged in said bill of complaint as having been committed by said Daniels and said J. J. Fales upon said complainant, or that the same were given without any consideration passing or moving from him to said Daniels, or that said note and mortgage, or either of them, were false, fraudulent, or feigned at the time of their date, or at any time since that period; but charges the truth to be, that no such frauds, as are particularly set forth in said bill of complaint, and in this answer denied, were committed upon the rights or property of said complainant by the said Daniels or the said J. J. Fales, or either of them, to the knowledge or belief of this respondent; but if any such frauds have been so committed, they have been committed without the knowledge, consent, privity, conspiracy, or connivance of this respondent, in any way or manner, or with any person or persons. And this respondent is entirely and utterly ignorant of the same, except as he is informed thereof by the complainant's said bill of complaint.

And this respondent further saith, in answer to the interrogatory specially addressed to him in said bill of complaint, that said Daniels did give this respondent a note for said sum of one thousand seven hundred and sixty-five dollars, and that the same was given for the consideration hereinbefore set forth, viz., the amount that was found due from said Daniels to this respondent upon the settlement of their partnership accounts; that sundry payments have heretofore been made by said Daniels to this respondent, amounting in all to the sum of four hundred dollars or thereabouts, according to the respondent's best recollection and belief; that said payments were all made prior to February first, A. D. 1842; that on or about said February first, according to this respondent's best recollection and belief, the said note and mortgage were assigned and transferred by this respondent to the Norfolk Mutual Insurance Company, in payment of certain debts due said Insurance Company from this respondent, and the same were received by said company, as clerk, without recourse to this respondent, for the full amount of said note that was then remaining due. This respondent therefore conceives that said note has been fully paid, as far as he is concerned. This respondent, at the time of said transfer and assignment, was justly indebted to said Insurance Company upon notes, to a greater amount than what remained then due upon said Daniels' note and mortgage; that said Daniels' note and mortgage were received by said company as cash, and this respondent's notes to them were cancelled to the extent of what remained due upon said Daniels' note at the time of said transfer. And this respondent, having never been informed, and not knowing of his own knowledge, cannot say whether any or what portion of said Daniels' note has been paid to said Insurance Company since the said transfer

and assignment, nor whether any or what portion thereof still remains due and unpaid; nor, if any portion thereof has been paid, when or where the same has been paid.

And this respondent denies all unlawful combination and confederacy and fraud in said bill charged; without that, that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this respondent.

And this respondent further saith, that on the twenty-eighth day of September last past, he filed his petition in the district court for the district of Massachusetts, for the benefit of the United States bankrupt act; that pursuant thereto he was duly decreed a bankrupt by said court; that he has given up all his property to the assignee appointed by said court for the benefit of his creditors; that he has duly filed in said court his petition for his discharge, which said petition is returnable on the first Tuesday of April next. Wherefore he prays that he may have the full benefit of said proceedings in bankruptcy, and that if said plaintiff shall prove any of said allegations against him, any decree thereupon against this respondent may be suspended till the question of his discharge in bankruptcy is ascertained.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct; and he humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

ELISHA F. FALES.

MANLIUS S. CLARKE,
Solicitor.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

March 3, 1843. Then personally appeared the above named Elisha F. Fales, and made oath to the truth of the foregoing answer by him subscribed.

Before me, ELLIS GRAY LORING,
Justice of the Peace.

March 6, 1843. Filed at the rules.

To the honorable judges of the United States circuit court, within and for the district of Massachusetts:

The answer of Saul B. Scott, one of the defendants to the bill of complaint of Samuel Warner, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that he admits that the said Adams Daniels

mentioned in said bill did, on or about the ninth day of October, A. D. 1837, mortgage to this defendant his said farm, and that the said mortgage was founded on two notes for the united sum of $4,200, but absolutely and unqualifiedly denies that the same was without consideration, and fraudulent, false, and feigned, as charged in the said bill, but distinctly avers that the said note and mortgage on the said lands were true and honest transactions; that previous to the making of the said notes on which the said mortgage was founded, the said Scott had become liable, as surety for the said Daniels, to creditors of the said Daniels to a very large amount; that at that time this defendant believed, and now believes, that his liabilities for the said Daniels reached the full sum of $4,200; that those liabilities were incurred for the said Daniels on promissory notes, payable at short periods, and always fluctuating and changing, and that this defendant kept no written account of his said liabilities for the said Daniels, and did not then, and does not now, know precisely their extent at any one time; but has reason to believe, and does believe, that at the time of the execution of the said mortgage, and from that time until years afterwards, this defendant's liabilities, or the paper securities of the said Daniels, was, for the whole period, the average sum of $4,200, as aforesaid; and that the mode in which the security on the land aforesaid was given to this defendant by the said Daniels, this defendant then and now was told and believes, was entirely conformable to practice and legal usage.

This defendant further answering denies, that he ever 'connived and conspired with, and lent himself to, the said Daniels and Joseph J. Fales for the purpose of fraud upon the said Warner, in any way or manner;' or 'that he received from said Daniels said notes and mortgage with a full, or with any knowledge, that any fraud had been committed upon the said Warner by the said Daniels and Fales, or either of them.'

And this defendant, in answer to the twelfth interrogatory, saith, that said Daniels did give this defendant notes for $4,200; that the original consideration of said notes were certain liabilities entered into by this defendant for the said Daniels; that nothing is now due upon said notes; that all the paper on which this defendant was liable for the said Daniels was from time to time taken up and cancelled; and that, on or about the 25th day of September, A. D. 1841, the entire liabilities of this defendant, for the said Daniels, having been duly cancelled, the said notes were surrendered to the said Daniels, and the said mortgage discharged.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed, with his reasonable costs and charges in his behalf most wrongfully sustained.

SAUL B. SCOTT.

FREDERICK W. SAWYER,
Solicitor in chancery.

U. S. A., MASS., *ss:*

BOSTON, *Feb. 15th*, 1843.

Personally appeared the above named Saul B. Scott, and made oath that the matter and things contained in the above answer, which are stated of his own knowledge, are true, and that he verily believes those things to be true which are stated to be matters of belief, opinion, and hearsay. Before me—

GEO. S. HILLARD,
Commissioner.

March 6, 1843, filed at the rules.

MASSACHUSETTS DISTRICT, *ss:*

SAMUEL WARNER
vs.
ADAMS DANIELS et al. } United States circuit court, in equity.

And now the said Adams Daniels comes into court, and deposes and says, that he has reason to believe, and does believe, that the said Warner is a man of no responsibility, entirely unable to respond to the judgment, if any, which this affiant may recover against the said Warner for costs; and he hereby prays that the said Warner may be required to stipulate for the costs and charges of the said suit.

ADAMS DANIELS.

U. S. A., MASS., *ss:*

BOSTON, *February* 15, 1843.

Sworn to before me—

GEO. S. HILLARD,
Commissioner.

MASSACHUSETTS DISTRICT, *ss:*

SAMUEL WARNER
vs.
JOSEPH J. FALES et al. } United States circuit court, in equity.

And now the said Joseph J. Fales comes into court, and deposes and says, that he has reason to believe, and does believe, that the said Warner is entirely irresponsible, and unable to pay the judgment (if any) which may be recovered by this affiant in the above entitled case, for costs of court; and this affiant therefore prays that the said Warner may be required to stipulate with sureties for the said costs.

JOSEPH J. FALES.

U. S. A., MASS., *ss:*

BOSTON, *February* 15, 1843.

Sworn to before me—

GEO. S. HILLARD,
Commissioner.

MASSACHUSETTS DISTRICT, *ss:*

SAMUEL WARNER
vs.
SAUL B. SCOTT et al. } United States circuit court, in equity.

And now the said Saul B. Scott comes into court, and deposes and

says, that he has reason to believe that the said Warner is entirely irresponsible, and unable to pay the judgment (if any) which this affiant may recover against him for costs in the above entitled case; and this affiant therefore prays that the said Warner may be required to stipulate with securities for the said costs.

SAUL B. SCOTT.

U. S. A., MASS., *ss:*

BOSTON, *February* 15, 1843.

Sworn to before me—

GEO. S. HILLARD,
Commissioner.

Circuit court U. S., Mass. district, May term, 1845.

WARNER
vs.
DANIELS et al. } May 31st.

Upon motion of the counsel of the said Daniels, it is ordered by the court, that the said defendant Daniels have leave to take the deposition of the defendant Scott, subject to all just exceptions.

By the court. FRANCIS BASSETT, *Clerk.*

CIRCUIT COURT U. S., *Massachusetts.*

SAMUEL WARNER,
vs.
ADAMS DANIELS et al. }

And now the said complainant excepts to the answer of the said Daniels, one of said respondents, and for causes of exception says, that in said bill it is charged that said granite company had no actual capital, but was a fiction; that said stock never had, or could have, any real value, and that said certificates were false and fraudulent; and that in the interrogatories in said bill propounded, to be answered by said Daniels, numbered 1, it is inquired whether the said Daniels, or Joseph J. Fales, (another of said respondents,) or either of them, ever owned any stock in said company; if yea, of whom did they buy all said stock, what price did they pay, and in what articles was said price paid; and said Daniels admitting in his said answer that, since the purchase of the land in said bill mentioned, he has owned forty-four shares of said stock, but does not state of whom he bought it, what price he paid, nor in what articles said price was paid. Nor does said Daniels answer, as to his information and belief, whether said J. J. Fales owned any of said stock, of whom he bought it, what price he paid, in what articles said price was paid. And in the interrogatory numbered 2, it is inquired what the capital stock of said company consisted in, from the nineteenth of November to the eighth of December, 1836; but to that part of said interrogatory said Daniels makes no answer, neither directly, nor as to his information and belief. In the same interrogatory, it is inquired whether any sums of money, or other property, had ever been paid into

said company by the stockholders previous to December eighth, 1836; if so, by what stockholder, and in what was the payment made; and in his answer said Daniels says, that on two hundred and forty shares, new stock, at $25 per share, ($6,000,) $2,190 had been paid by surrendering seventy-three shares of old stock, on which 30 per cent. ($2,190) had been paid, and $3,800 paid by endorsement on said company's note; but does not state what note, how it originated, what was its consideration; nor does he state how said 30 per cent. on said seventy-three shares of old stock was paid, or in what; nor does he state when said sums were paid in, or whether they remained in as part of said company's capital on said eighth of December. Also, in said bill it is alleged that said Daniels and J. J. Fales, represented to the complainant that said stock would pay a handsome dividend the ensuing spring; and in the fourth interrogatory it is inquired whether they, or either of them, did not so represent; but said Daniels does not answer whether said Fales did so represent, or to that effect; and as to himself, said Daniels' answer is literal and evasive. Also, in said bill it is charged that said Daniels and Fales represented to the complainant, at the time of said negotiation, that said granite company owned a brig and other vessels, which they kept employed in carrying stone, and that said company had in their employ, as their agent, a Colonel Bates, a clerk, and a great number of hands. And in the fifth and sixth interrogatories, said Daniels is required to answer whether he or said Fales, or either of them, did not so represent; but said Daniels in said answer does not state whether said Fales so represented or not; and as to himself, he answers only as to his knowledge, not as to his belief and recollection. Said Daniels also answers, that it appears from the stock and certificate books of the said company, that the stock was originally divided [into] 2,000 shares, of $100 each; that 300 shares, and no more, had been issued previous to December seventh, 1836; that, on the twenty-eighth of November, 1836, it was voted to increase the number of shares to 8,000, and reduce the par value to $25; that, on the seventh of December, 1836, said Fales surrendered seventy-three shares old stock, on which 30 per cent. had been paid, and received two hundred and forty shares new, which were paid for, in addition to said 30 per cent., by endorsing $3,800 on a note held by said Fales, and $10 check; and that said two hundred and forty shares are the same transferred to Warner. But said Daniels does not state whether he believes said facts, so appearing from said books, to be true; nor does he state, to his knowledge and belief, how said 30 per cent. on said shares was paid, nor how said note, on which said $3,800 was endorsed, originated; how it became the property of said Fales; what was its consideration. Said Daniels also says he paid said Fales for said two hundred and forty shares in part, (that is, to the amount of about $350,) 'by giving up said Fales's note, bought by Daniels of another person;' but does not state who that other person was, what was the original consideration of said note, or what said Daniels gave for it.

Said Daniels also says, he has been credibly informed, and believes,

said granite company possesses a valuable quarry of granite, purchased originally by said Fales, and G. C. James, M. & Newell Thompson, in the fall of 1835, for the sum of $4,500, and by said individuals sold to said company, on or about the twenty-fifth of August, 1836, for the sum of $53,000. But he does not state whether said $4,500, or any part of it, was ever paid, or how it was secured to be paid, whether by mortgage on the quarry, or otherwise; nor does he state that said $53,000 was ever paid in reality, or any part of it, unless in its own stock, as before specified, or how said $53,000 was secured to be paid.

In the eighth interrogatory, it is inquired whether there was any negotiation concerning eastern land connected with the purchsse of said stock, as between the said Daniels and said J. J. Fales; and, if so, what was the whole transaction? Said Daniels, in his answer, says he did sell said Fales some eastern land, and that it was connected with the purchase of the stock sold to said Warner; that said Daniels purchased, in August, 1835, about 3,000 acres of land at $8 per acre, paying therefor one fourth cash, and giving security for the remainder, payable in one, two, and three years, and sold three-fourths of that purchase to J. J. Fales, in October, 1836, at cost, taking in payment for said land an obligation of said Fales for stock in said Cleft Ledge Granite Company, at the par value on demand. But said Daniels does not state what was the security which he gave for the remaining three-fourths of said land; nor whether the payment due for said land in August, 1836, had been paid previous to said sale to said Fales; nor how it had been paid; nor whether said remaining three-fourths of said purchase has ever been paid; nor does he state whether he sold to said Fales three-fourths of his whole interest in every part of the 3,000 acres in common, or three-fourths of the number of acres to be held in severalty; nor does he state what title he gave to said Fales, whether a clear title, or a title encumbered by said security of said three-fourths of the original purchase money; nor does said Daniels state of whom he originally purchased said 3,000 acres of land.

Said Daniels further says, that at the time of his first interview with said Warner, he informed him, Warner, that he, Daniels, held said obligation of said Fales for the payment of $5,249 in Cleft Ledge Granite Company stock, at the par value; but does not state what that par value was, or what was said on that subject; or whether he told said Warner what the par value was, or what was said on that subject; or what representations were made to said Warner as to the par value, or the actual value, of said stock. Said Daniels also denies that he ever represented to said Warner that said stock would pay a handsome dividend; but does not state whether he did not deliver to said Warner a certain printed estimate of the nett profits of working said quarry—making there for thirty weeks, $214,500, or some other estimate.

And the said Warner prays, that the said Daniels may be required to put in a further, full, and perfect answer to these particulars.

By his solicitor, JONA. P. BISHOP.

CIRCUIT COURT UNITED STATES, *Massachusetts:*

SAMUEL WARNER, }
vs.
ADAMS DANIEL et al. }

And now the said complainant excepts to the answer of Joseph J. Fales, (one of said respondents,) and for cause of exception says, that in said bill it is charged that said Granite Company had no actual capital, but was a fiction; that said stock never had or could have any real value; and that said certificates were false and fraudulent; and that in the interrogatories in said bill propounded, to be answered by Fales, numbered 1, it is inquired whether said Fales and Adams Daniels (another of said respondents) ever owned any stock in said Granite Company; if yea, of whom did they buy it, what price did they pay, and in what articles was said price paid? Now said Fales admits, in his answer, that, on the twentieth of November, 1836, he owned seventy-three shares of the old stock of said company, on which he had paid an assessment of 30 per cent., but does not state of whom he bought said stock, what price he paid for it, in what articles said price was paid, or when the stock was bought, or when it was paid for. Nor does he state when, or in what articles said 30 per cent. assessment was paid. He also admits that, on the seventh of December, 1836, he surrendered said seventy-three shares of old stock, and took a certificate of two hundred and forty shares, (new;) and, that by way of payment for the same, he indorsed $3,800 00 on said company's note; but does not state what note, when it was given, how it originated, or what was its consideration. He also admits that said two hundred and forty shares were afterward transferred to said Daniels, and that said Daniels paid for the same by surrendering a certain obligation to the amount of $5,249, which he held against said Fales, and by giving a promissory note for the remaining $751; but said Fales does not state whether said promissory note was ever paid, when it was made payable, or when or in what it was paid. Nor does said Fales answer, as to his information and belief, whether said Daniels ever owned any of said stock other than that transferred to him by said Fales, of whom he bought it, when, what price he paid for it, or in what articles said price was paid.

And, in the interrogatory numbered 2, it is inquired whether any sums of money, or other property, had ever been paid into said company by the stockholders previous to the eighth of December, 1836—of what did the capital stock of said company consist from the nineteenth of November, to the eighth of December, 1836? As to the first part of this interrogatory, said Fales answers, that an assessment of 30 per cent. on 230 shares of old stock had been levied and paid as follows: 20 shares to A. D. Capron, on which $200 was paid when the assessment was levied, and the remainder afterward, (but said Fales does not state in what articles said payment was made, nor when, or in what said remainder was paid;) 10 shares to A. D. Capron, paid for by his services as clerk for said company; and 36 shares to John Sawin, paid for by

labor, &c., (but said Fales does not state when or where said services and labor were performed;) 10 shares to A. D. Capron, paid for, one-third in cash, and two-thirds by indorsing the same on said company's note, (but said Fales does not state what note, when, or for what it was given, or how it originated;) 131 shares to Fales and Thompson, paid by indorsing on said company's note to them, (but said Fales does not state what note, how it originated, or what was its consideration;) nor does said Fales state whether any, or what part of said funds, paid in by the stockholders of said company, remained in said company's hands till the nineteenth of November, 1836, or from that time to the eighth of December following; nor does he state *where* the *above mentioned* payments were made, whether at Boston, or Durham, or elsewhere.

And, in the interrogatory numbered 3, it is inquired whether said Fales and Daniels ever represented to the complainant, or any one else, that the stock of said company was worth its nominal value in cash, in Boston, or worth more than any Boston bank stock, but said Fales does not answer whether said Daniels did so represent, or to that effect; and, as to himself, he does not answer whether he did not cause such representations to be made, or know of their being made.

And, in the interrogatory numbered 4, it is inquired whether the said Fales and Daniels, or either of them, ever represented to the plaintiff, or any one else, that the stock of said company would pay a handsome dividend upon its nominal value the next spring, or any thing of like import; but said Fales does not answer whether said Daniels did not so represent, or cause such representations to be made; and, as to himself, said Fales answers, that he might, and probably did, represent that it was his opinion said stock would pay a handsome dividend the next spring, and that said plaintiff expressed the same opinion, after making *certain* estimates; but said Fales does not state what those estimates were; upon what data founded; whether he did not furnish said data; or whether said data were not fictitious, and calculated to mislead and deceive the plaintiff.

Also, in said bill, it is charged that said Fales and Daniels represented to the complainant that said Granite Company owned a brig and other vessels, which they kept employed in carrying stone; and that said company had in their employ, as their agent, one Colonel Bates, a clerk, and a great number of hands getting out stone to complete a contract of $50,000 with the United States; and that said company wanted the plaintiff to look after their navigation. And in the fifth and sixth interrogatories, it is inquired whether they did not so represent; but said Fales does not answer whether said Daniels did not make such representations, or procure them to be made; and, as to himself, he does not answer whether he did not cause such representations to be made, or know of their being made; or whether he did not represent that said company strongly contemplated purchasing a brig and other vessels, and that such a man as the plaintiff (an old sea captain) would be wanted to manage them.

And, in the seventh interrogatory, it is inquired whether said Fales

and Daniels ever represented to the plaintiff, or any one else, that said company had a number of large contracts with the United States for furnishing stone, or any thing to that effect; but said Fales does not state whether said Daniels ever so represented; and, as to himself, he does not answer whether he did not procure such representations to be made, or know of their being made, or whether he did not make such statements, as to the prospect of obtaining said contracts with the United States, as were unfounded, and calculated to deceive the plaintiff. Said Fales also admits, that he represented that said company was negotiating for *certain* contracts with the United States; but he does not state what those contracts were, except the one for furnishing stone at Fort Walcott, nor does he state what he represented as to the progress and probable results of said negotiation.

In the eighth interrogatory, it is inquired whether there was ever any negotiation concerning eastern land, in any way connected with the purchase of said stock, as between the said Fales and Daniels; and, if so, what was the whole transaction? Said Fales, in his answer, says that he did purchase of said Daniels 2,250 acres of eastern land at $8 per acre, and that he paid for the same by transferring $5,249 of the said Granite Company's stock to said Daniels, and by giving said company's notes for the remainder; but he does not state what notes, how they originated, or what was the consideration. Nor does he state when said Daniels bought said eastern land; by what title he held it; whether he had ever paid any thing for it; whether the whole, or any part of it, was mortgaged as security for the purchase money. Nor does said Fales state whether the said Daniels transferred to him the absolute fee in said lands, to be held by him in severalty, and free from incumbrances; whether he still holds said lands, or has ever exerted any acts of ownership over them.

It is also charged in said bill, that said Granite Company was a fiction; and said Fales, in his answer, says that the original proprietors bought said quarry for $4,500, and afterward sold it to said company for $53,000; but he does not state whether any part of said $4,500 was ever paid, or how it was secured to be paid, or what title was given to the original proprietors. Nor does he state whether any part of said $53,000 was ever paid, how it was paid, or how secured to be paid, or what title was given to said company, whether a legal one, or merely an equity of redemption.

By his solicitor, JONA. P. BISHOP.

To the honorable judges of the circuit court of the United States, holden within and for the district of Massachusetts.

The *amended* answer of Adams Daniels to the bill of complaint of Samuel Warner.

This defendant, saving and reserving to himself all benefit of exception to the said bill for the defects, for answer to so much of said bill as he is advised is material for him to answer, says, that he admits that the said Warner was, on or about the nineteenth day of November, A. D.

1836, possessed in his own right of the land described in the paper marked A, annexed to his said bill, but he denies that said land was of more than three thousand dollars in value.

And this defendant further answering says, that, on or about the day last mentioned, he, with Joseph J. Fales, also a defendant in this suit, was in Wrentham, at the house of one Henry Fisk, where they dined; and that, as they were all standing out of doors after dinner, a stranger was riding past, whom said Fisk addressed as Mr. Warner, and whom he then introduced to this defendant and said Fales, observing to them that said Warner wished to sell his farm, and asking them if either of them wished to buy one. The person thus introduced was the present plaintiff, whom this defendant then saw for the first time, and the mention of the sale of his farm was altogether casual, as above stated; and, until the moment of his accidental coming to them as aforesaid, this defendant had no information that such person as the plaintiff existed. In reply to the said question of said Fisk, this defendant replied, that he would buy a farm if it suited him and he could pay for it. Whereupon, the plaintiff invited this defendant to go and examine his farm, which is the farm mentioned in the plaintiff's bill, and they accordingly spent an hour or two in viewing it; at the expiration of which, this defendant stated to the plaintiff that he had no means of paying for said farm, except in the stock of a certain company called the Cleft Ledge Granite Company.

This defendant, further answering, denies that he then had with him, or saw exhibited at that interview, a great number of papers like the paper marked B, annexed to the plaintiff's bill, but he admits that he had with him one blank certificate, which he delivered to said Warner. This certificate this defendant, in his original answer in this case, admitted was similar to said paper marked B, as he then, at the time of making said answer, supposed it to be; but upon subsequent reflection and inspection of the books of said company, he now has reason to believe, and therefore he so alleges the fact to be, according to his best knowledge and belief, that the certificate which he then handed to said Warner was a certificate of old stock of said company, at $100 a share, and not a certificate of its new stock at $25 a share, as is annexed to the plaintiff's bill; but this defendant further says, that whether any thing was said between him and said plaintiff, about the par value of said stock, he does not remember. And he utterly denies that said certificate, or any certificate, then, or at any time exhibited to the plaintiff by this defendant, or by any person for him, or in his presence, purported that said company had a capital stock of two hundred thousand dollars all paid in.

This defendant, further answering, denies that at that interview, or at any other interview, prior to the completion of the said trade between the plaintiff and this defendant, or any one for him, or in his hearing, or to his knowledge or belief, assured the said Warner that said Cleft Ledge Granite Company's stock, or certificates of it, was worth its numerical value in cash in Boston, and was worth more in Boston market

than any Boston bank stock;' or, 'that said stock would pay a handsome dividend the next spring;' or, 'that, if said company worked their ledge, there would be an annual dividend of 100 per cent.;' or, 'that nothing would induce this defendant to part with said stock, if he could not get more;' or, 'that said Fales and this defendant wanted said land for the silk business, and could not, under the pressure of the times, raise money to purchase it;' or, 'that said company owned a fine brig, and a number of other vessels;' or, 'that the said company wanted to employ a man like the plaintiff to look after their navigation;' or, 'that said company wanted to employ the plaintiff to sail said brig, and sell her cargoes;' or, 'that they would give, or cause said Warner to make, $1,500 a year;' or, 'that said company had in their employ a Colonel Bates, at a salary of $1,500 a year, and a vast number of hands employed in getting out stone to complete a contract with the United States Government, of fifty thousand dollars;' or, 'that said company had a number of contracts for furnishing stone, particularly with the United States Government, for $100,000;' or, 'that the said company had obtained a very important contract with said Government, and to supply stone for light-house, platform fortifications, and other improvements, at Fort Walcot;' or, 'that said Bates was negotiating with said Government's agent at Newport for another large contract;' or, 'that the said company was certain of a very important contract with said Government, to supply stone for the fortifications at Portsmouth;' nor, to the best of his recollection and belief, has he since said trade, as is falsely alleged in the plaintiff's bill.

And this defendant particularly denies that said Fales, or any other person by his authority, or in his hearing, or to his knowledge, ever directly or indirectly made to said Warner any such statements or representations as are above mentioned, or referred to in this article of his answer; and he denies that he, or any person in his behalf, ever delivered to said Warner any estimate of the profits of working said quarry. On the contrary, this defendant, at the interview above referred to, or at another, and previous to the making of any contract for the sale of said farm, expressly stated to said Warner that he could not tell the actual value of said stock; that the said company had worked said quarry but a short time, and that said Warner must make his own inquiries, and purchase said stock on his own estimate of its value, if he purchased it at all. And this defendant avers, that he is credibly informed, and verily believes, that said Warner did thoroughly inform himself as to the organization, situation, and prospects of said company, previous to his purchasing any of its stock of this defendant; and that, at the moment of said purchase, said Warner was as well informed as to the actual condition of said company and its stock, as any other individual connected with it. This defendant is credibly informed, and believes, that some months after he purchased said farm, said Warner, being then the owner of stock in said company, conferred with said Fales about purchasing a vessel for the use of said company; in which conversation such a scheme was discussed between them, in connexion with other

schemes for the working of said quarry; and he believes that those subsequent conversations, to which this defendant was not a party, have led the plaintiff, mistakenly and erroneously, to make the aforesaid false allegations in his bill.

And this defendant further answering avers, that when he accidentally met the plaintiff at said Fisk's, as before stated, he was not in search of a farm, nor desirous of buying one, and that his going with said Fales to look at the plaintiff's farm, was in compliance with the plaintiff's own proposition and request, and not upon any suggestion of this defendant, or of said Fales, to his knowledge or belief; and that this defendant did not, nor did said Fales, to his knowledge or belief, say or pretend to the plaintiff that they, or either of them, were desirous to purchase his farm, or propose to him to sell it to them, as in his bill he has alleged; but, on the contrary, it was the plaintiff who proposed the sale to them, or one of them, and this defendant merely expressed his willingness to buy it, provided they could agree on the price and mode of payment.

And this defendant further answering says, that in the month of August, A. D. 1835, he purchased about three thousand acres of land in Maine, for which he gave at the rate of eight dollars an acre, paying therefor one-fourth part in cash, and giving security for the residue, payable in one, two, and three years, by his own promissory notes, with a mortgage of the same land; which notes have since been paid and taken up, and no incumbrance now exists, or ever has existed on said land, prejudicial to the title of any grantee of this defendant In the month of October preceding the first meeting between this defendant and the plaintiff, this defendant sold three-fourths of said lands to said Fales at cost, taking in payment therefor the said Fales' obligation for the payment of five thousand two hundred and forty-nine dollars in stock of the Cleft Ledge Granite Company at the par value, on demand, and the remainder in notes of the said company. About four thousand dollars of the notes given by this defendant for said lands had been paid before their maturity, and the balance of the notes was settled by this defendant after the said negotiation with said Fales. Said land was bought by this defendant of one K. B. Sewell, and the said three-fourths were sold to said Fales in common, with a general warranty; but whether with any recital of said incumbrance *was* particularly mentioned in the deed, this defendant does not now remember.

And this defendant further answering says, that at the time of his interview aforesaid with the plaintiff upon his farm, he held the above mentioned obligation of said Fales, of which fact he then informed the plaintiff; and that upon taking leave of the plaintiff at that time, this defendant delivered to the plaintiff a copy of the act of incorporation of said company, and of the by-laws of the same, and a blank certificate of shares in their capital stock, and a list of the officers of said company who were to be found in Boston; and also a printed copy of a report of Charles T. Jackson, M. D., a distinguished geologist of high reputation for his science and integrity, and much confided in by the executive

officers and legislatures of Massachusetts and Maine, as this defendant is credibly informed and believes, who had been employed by said company to explore and report the state and condition of their said real estate; a copy of which report this defendant herewith exhibits, and craves leave to refer to the same, and believes, and therefore so avers, that said report is true.

And at the same time this defendant stated to the plaintiff that he, this defendant, was but little acquainted with the character and value of the stock of said company, but that with the papers then put into his hands, the plaintiff could go to Boston, and, if he saw fit, to Durham, in New Hampshire, and examine the quarry, and ascertain the value of the stock; and that, if afterward he should think of trading with this defendant, by exchanging his farm for said stock, this defendant could be found at the Lamb tavern in Boston. Some days afterward the plaintiff called on this defendant at said tavern, and informed him that he had seen Mr. George Odiorne, the president of said company, and several of its officers, and had satisfied himself with regard to the value of its stock, and said that he was ready to take said stock at its par value, provided they could agree upon the price of the farm. The plaintiff then demanded 6,000 dollars for said farm and outland, with certain reservations, and stated that the buildings thereon were worth 3,500 dollars, and were insured for 2,200 dollars; that his farm contained twelve acres of 'watered land' and 'silk-grass land' of great value, and a mill privilege worth 1,000 dollars; whereas this defendant afterward, and after his purchase, ascertained, and so avers the fact to be, that said buildings were not worth half that sum; that there was no mill privilege on said farm; that there was but about seven acres of said watered land, and that said policy was void, for the false and inflamed representation of the value of said buildings. This offer, and a subsequent offer made by the plaintiff, this defendant utterly declined, but offered the plaintiff 5,000 dollars for said farm; which the plaintiff did not accept, and they separated. This interview, according to this defendant's best recollection and belief, was on a Saturday; on the following Monday the plaintiff invited this defendant to ride with him, having previously and strongly urged this defendant to accept his said proposals for the sale of said farm, and stated to this defendant, which this defendant was never before informed of, that said quarry was purchased by individuals connected with said company for 4,500 dollars; and subsequently sold to said company for 53,000 dollars; and further stated to this defendant, that said company had paid for said quarry by their own notes on time; that said notes must be paid before any dividend of profits could be declared, which would take a great while; that the holders of said notes would have to take stock in payment, or the stock must be sacrificed to pay the notes; that the quarry might not be so good as it then appeared; that he, the plaintiff, had learned many things about said stock which he, this defendant, did not know; and that, therefore, though 6,000 dollars might be too much for the farm, yet it might turn out that 25 dollars a share was too much for the stock. Influenced by these considerations and arguments, this defendant consented to give the

plaintiff 6,000 dollars for his farm, payable in said stock, which was agreed to by the plaintiff; and thereupon a bond was drawn and signed, conformably, as this defendant supposes, to the paper marked C, annexed to the plaintiff's bill.

And this defendant avers, that during the whole of said negotiation with the plaintiff, the said Fales was not interested, either directly or indirectly, in law or in equity, with this defendant in the said purchase; neither did this defendant ask or seek, nor, as he verily believes, did he receive, any influence or assistance of said Fales in said transaction.

And this defendant further answering says, that on or about the eighth day of December then following, having procured from said Fales a certificate for two hundred and forty shares in the capital stock of said company, made out in the name of the said Fales, and by him assigned to the plaintiff, this defendant delivered the same to the plaintiff, and received from him therefor a deed of said farm. And at the time of executing said deed, the plaintiff being rallied by the scrivener about selling his farm for granite stock, replied, that he knew all about the stock, and had told this defendant many things about it which this defendant did not know before.

This defendant further avers, that from the time of said conveyance to him, on or about December eighth, A. D. 1836, until the eighteenth day of August, A. D. 1841, he received no communication in any manner from the plaintiff, indicating a disposition on his part to annul said contract, or to set aside said conveyance; but on the contrary, as this defendant is informed by the books of said company, and verily believes, the plaintiff, on or about March sixteenth, A. D. 1840, sold and conveyed away all his two hundred and forty shares in said stock, except twenty-four shares, and had no remaining interest therein. And this defendant further avers his belief, and therefore so alleges the fact to be, that long prior to the sale of said stock by the plaintiff, the plaintiff well knew every fact which he now knows, materially affecting its value.

And as touching the origin and organization of said Cleft Ledge Granite Company, and the nature and value of its stock, this defendant, answering according to the best of his knowledge, information, and belief, further says, that it is not true that the said company is a fiction, got up to cheat and defraud the public, as the plaintiff has alleged; but, on the contrary, the said company is, or was, possessed of a valuable quarry of granite, situated in the town of Durham, in New Hampshire, described in the report of Doctor Charles T. Jackson herein above referred to, the title to which is, or was, in the said company in fee simple. This defendant is credibly informed and believes, that in the autumn of the year 1835, the said quarry was purchased by G. C. Thompson, Newell A. Thompson, Joseph M. Thompson, and the said Joseph J. Fales, for the sum of four thousand five hundred dollars, but how this sum was paid, or secured to be paid, this defendant has never been informed, and does not know; and that said purchasers immediately expended about three thousand five hundred dollars in buildings and wharf, and in opening roads, and in opening said quarry, which at that

time had never been worked, and employed nearly fifty men in said operations for a considerable period of time, and fully tested the quality of said granite, which they found to be very good, as well as abundant in quantity. Afterwards, on the eighteenth day of June, A. D. 1836, the said owners of said quarry, together with Aaron D. Capen, John Sawin, jr., James K. Whipple, William Watson, and Erastus Barber, their associates, were, by an act of the legislature of New Hampshire, a copy whereof is herewith exhibited, being the paper marked A, annexed to this defendant's original answer in this case, incorporated and made a body politic, by the name of the Cleft Ledge Granite Company, with the powers usually incident to similar corporations, and other powers in said act mentioned; which is the same corporation mentioned in the plaintiff's bill and in this answer. This act the corporators therein mentioned accepted, and said corporation was afterward duly organized at a meeting of said corporators holden at Boston, in Massachusetts, of which commonwealth, as this defendant is informed and believes, and therefore alleges the fact to be, all the persons named in said act, except the clerk of said corporation, being all the members of the corporation, were then, and at the time of passing the act, citizens.

Afterwards, on or about the 25th day of August, A. D. 1836, the owners of said quarry sold the same to said corporation for fifty-three thousand dollars, payable, one-fourth part in thirty days, and the residue in three equal annual payments, secured, as this defendant was informed by the plaintiff during their said negotiation, by notes and a mortgage of the same premises; one of which notes, viz., for thirteen thousand two hundred and fifty dollars, became the property of said Fales. Said company, as appears by their books and certificates, which this defendant believes to be true, then divided their capital stock into two thousand shares of one hundred dollars each, of which shares certificates for only 303 had been issued previous to December 7th, 1836, and on these 303 shares an assessment had already been made of thirty per cent., which had been duly paid and endorsed on the certificates, and which, as this defendant believes, remained a part of the capital stock of said company. But after said first division of stock, viz., November twenty-eighth, 1836, said company voted to increase their number of shares in their stock to eight thousand, and to reduce their par value to twenty-five dollars a share, and that the original certificates should be surrendered, and new certificates issued at such reduced rate. And it further appears by said books, that said Fales being the holder of seventy-three shares of the said old stock, on December seventh, A. D. 1836, surrendered the certificates thereof, and received for the same a certificate for 240 shares of said new stock, for which he paid in manner following, namely: said 240 shares at twenty-five dollars a share, being - - - $6,000
was paid for by said instalment of thirty per cent. on seventy-three shares of old stock, which this defendant is informed and believes was paid by endorsing the amount of said note of $13,250 held by said Fales, being - - $2,190

and by a further endorsement of the same note of - 3,800
and by his memorandum check for - - 10

amounting in all to the required sum of - - - $6,000

And this defendant further answering says, that the said two hundred and forty shares are the same which were transferred to the plaintiff for his said farm, as herein is before stated, and that this defendant purchased them of said Fales, and paid him for them in the following manner, namely, he surrendered to said Fales his obligation before mentioned to deliver stock, the amount of - - - $5,249
and gave to said Fales his promissory note for - - 751

$6,000

which note this defendant afterward paid as follows, namely, by four hundred dollars in money, and the balance in a note against Fales for a larger sum, but for what sum he does not remember, which was held by Cummings, Hildreth & Co., and for balance on account between Fales and this defendant. This defendant negotiated with said Hildreth & Co. for said note, to be paid in certain merchandise, worth to this defendant about one hundred dollars; and afterwards the said merchandise was delivered to said Hildreth & Co. by said Fales for this defendant, and the said note surrendered to said Fales.

And this defendant further answering says, that he never mortgaged or otherwise incumbered said farm, for the purpose of bewildering said plaintiff, or covering the title to the same; but he admits that he did mortgage said farm on or about the tenth day of December, A. D. 1836, to Elisha F. Fales, to secure the payment of about one thousand seven hundred and sixty-five dollars, which this defendant justly owed him upon a settlement of their previous concerns as partners in trade; which debt, long before the filing of the plaintiff's bill, was fully paid and the mortgage discharged, namely, on or about February the first, A. D. 1842.

This defendant further admits that, on or about October ninth, A. D. 1837, he mortgaged said farm to one Saul B. Scott; which mortgage, he avers, was made to secure said Scott against certain liabilities he had incurred for this defendant to his creditors, to the amount of about four thousand two hundred dollars, which debts this defendant afterward paid, and thereupon said mortgage was discharged on or about September twenty-fifth, A. D. 1841, and long before the filing of the plaintiff's bill.

And this defendant avers, that both said mortgages were made in perfect good faith for debts really and wholly and justly due, and for liabilities actually and legally existing, and without any reference or view toward the plaintiff or his pretended claim set up in his said bill; and he utterly denies the existence of any such conspiracy as the plaintiff alleges, between himself and said Elisha F. Fales or said Scott, and every other conspiracy and fraudulent intent mentioned in said bill; and he also denies that he ever deluded said Warner, or misrepresented any

fact concerning said company or its stock, or made any false or deceptive statement to him.

On the contrary, he avers that, at the time of their said contract, said stock transferred to the plaintiff was worth as much, in this defendant's judgment, as said farm; that the whole of said negotiation was fair and open; that the plaintiff had ample time and means of informing himself beforehand of every material fact relating to said stock, and actually did so; and that at the time of the conveyance of said farm to this defendant, the plaintiff actually possessed more knowledge and information, both of said corporation and its stock and property, and of said farm, than was possessed by this defendant; and if said stock is now of less available value than said farm, which this defendant does not know, and therefore does not admit, it is caused by any diminution of the intrinsic value of the said quarry and other property, but by other circumstances affecting the general enterprise and course of trade of the country.

And this defendant, further answering to the interrogatories specially propounded in said bill, says:

To the first interrogatory he answers, that he did not himself own any stock in said company at the time of the plaintiff's said conveyance to him, nor had he previously owned any, but only held the obligation of said Joseph J. Fales for the transfer of stock to the amount of five thousand two hundred and forty-nine dollars, as he has hereinbefore stated; but since that time this defendant bought forty-four shares of said new stock of Newell A. Thompson, at twenty-five dollars a share, being the par value, by taking the same in part payment of some real estate which he sold to said Thompson. The price which this defendant paid for the stock which was conveyed to the plaintiff as aforesaid was twenty-five dollars a share, in the manner hereinbefore stated. In regard to any stock held by said Fales, beyond the two hundred forty shares before mentioned, this defendant, since the filing of his original answer in the case, has found, by inspection of the books of said company, that said Joseph J. Fales had one hundred thirty-five shares of said stock transferred to him since the purchase by him of said two hundred forty shares, but this defendant has no further information or belief touching his owning any other stock in said company, or what or how he paid for it, except as he has already stated.

To the second interrogatory he answers, that whether any thing had ever been paid to said company by the stockholders previous to December eighth, A. D. 1836, he does not know; but he has been informed, and believes, that, on or before that day, the payments actually made on two hundred and thirty shares of its old stock were substantially as follows, namely:

On twenty shares held by A. D. Capen, thirty per cent. was assessed, of which two hundred dollars was paid at the time of the assessment, and the residue afterward, being	$600
On ten shares held by said Capen, the assessment of thirty per cent. was paid by his services as clerk	300

On ten shares held by W. D. Callahan, the thirty per cent. assessed was paid by one hundred dollars in cash and the residue in his note, which was sold to Joseph J. Fales, and paid for by indorsing the amount on his note against said company	$300
On five shares held by E. F. Newton, said assessment was paid in cash	150
On ten shares held by Eliza Sweet, said assessment was paid in cash	300
On thirty-six shares held by John Sawin, jr., said assessment was paid in labor and tools	1,080
On eight shares held by Wm. Messenger, said assessment was paid in cash	240
On one hundred and thirty-one shares held by Fales and Thompson, said assessment was paid by an indorsement on the company's note	3,930
And for two hundred forty shares of new stock, issued as before stated at twenty-five dollars a share, payment at par was made by said Fales in manner before mentioned, amounting to	6,000
The whole of which payments amount to	$12,900

All of which payments, as this defendant is informed and believes, were made to Peter Harvey, the treasurer of said company, on or before December 8th, A. D. 1836, except those which have hereinbefore been otherwise stated. And this defendant is further informed and believes, that at the time last mentioned said company owned and possessed sixty acres of land in Durham, in New Hampshire, including said quarry of granite of great value, on which were situated a dwelling house and barn, and other out buildings, a large blacksmith's shop and hammering shop, and a wharf; that said quarry had already been opened, tested, and worked to a considerable extent, and at an expense of many thousand dollars; that a road to it had been made; that a large quantity of tools for quarrying and working the stone had been procured, together with a number of carts, wheels, trucks, and drays for the transportation of stone; and that they had at that time blocks of granite, in different stages of forwardness, to the value of several thousand dollars, together with various contracts and obligations. But this defendant does not know, and never pretended to have any accurate knowledge, of the capital or condition of said company, at that or any other time.

To the third interrogatory he answers, that he never did represent to the plaintiff, nor to any one else to his knowledge, that the stock of said company was worth more than its nominal value in cash in Boston, nor that it was worth more than any Boston bank stock; and whether said Joseph J. Fales did ever so represent, this defendant has no knowledge or information, and does not believe that he ever did.

To the fourth interrogatory he answers, that he never did represent to the plaintiff, in month of November, A. D. 1836, nor at any other

time to his recollection, that the stock of said company would pay a handsome dividend the then next spring upon its nominal value, nor any thing of the like import; nor does he know, recollect, or believe that he ever made said representations to any person, nor has he any knowledge, information, or belief that said Joseph J. Fales ever made such representation.

To the fifth interrogatory he answers, that he never did, nor has he any knowledge, information, or belief that said Fales ever did, represent to the plaintiff that said company owned a brig or any other vessel, or employed any vessel, or wished the plaintiff to be employed or concerned about their navigation, in any respect whatever, or any thing to that amount, or of that import.

To the sixth interrogatory he answers, that he never did, nor has he any knowledge, information, or belief that said Fales ever did, represent to the plaintiff, or any one else, that said company had an agent by the name of Bates, at a salary of fifteen hundred dollars a year, or a clerk; a great number of hands employed in getting out work to complete a contract with the United States for fifty thousand dollars, nor did he ever so represent to any person, to the best of his recollection and belief.

To the seventh interrogatory he answers, that he never did, nor has he any knowledge, information, or belief that said Fales ever did, make to the plaintiff, or to any other person, any such representation as is therein inquired of, nor any representation to that effect, previous to said transfer, to the best of his recollection and belief since.

To the eighth interrogatory he answers, that he has already particularly answered every part of this interrogatory on the fifth page of this answer.

To the ninth interrogatory he answers, that the said Fales has not, and never had, any equitable or other interest, directly or indirectly, in any part of the land conveyed by the plaintiff to this defendant.

To the tenth interrogatory he answers, that he did pay said Fales for said certificates of stock as follows, namely, five thousand two hundred and forty-nine dollars thereof in eastern lands at costs namely, eight dollars an acre and interest, and seven hundred and fifty-one dollars, partly, to wit, four hundred dollars in cash, and the residue in a note against said Fales, which he bought of Cummings, Hildreth & Co., all of which he has herein before stated.

To the eleventh interrogatory he answers, that he did give to said Elisha F. Fales a note for one thousand seven hundred and sixty-five dollars; that the original consideration for the same was a balance due the said Fales on the final settlement of their partnership accounts; that the principal and interest of said note were paid on the day that said mortgage was discharged; that nothing is now due on said note, and that said mortgage was discharged long before the filing of the plaintiff's bill.

To the twelfth interrogatory he answers, that he did give to said Scott two notes, amounting to four thousand two hundred dollars, the original

consideration therefor was certain liabilities by endorsement which said Scott had made for the accommodation of this defendant to about the same amount; that those liabilities have all been cancelled; that said notes have been surrendered to this defendant, and that said mortgage is discharged.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and he hereby prays to be hence dismissed, with his cost and reasonable charges in this behalf most wrongfully sustained.

ADAMS DANIELS.

October 3, 1843. Filed at the rules.

MASSACHUSETTS, *ss: United States circuit court.*

SAMUEL WARNER
vs.
ADAMS DANIELS AND JOSEPH J. FALES et als.

J. J. Fales's answers to plaintiff's exceptions to his answers in chief.

The said defendant, to the first clause of said exception, answering, says, that he bought said shares of the said company; to the second clause he answering says, that he paid at the rate of $100 per share; to the third clause he answering says, that said thirty per cent. was paid by endorsing the same on a note held by me of said company's; to the fourth clause he answering says, that fifty-seven of said shares were bought October twenty-fifth, and sixteen shares November fourteenth, 1836, making seventy-three shares; to the fifth clause he answering says, it was paid for when transferred to him.

The defendant, in answering to plaintiff's inquiry as to what note the endorsement of $3,800 was made upon, says, that it was made on said company's note received by defendant of said company on the twenty-fifth day of August, 1836, in part payment for the said granite quarry and other property therewith connected, situated in Durham, New Hampshire.

Defendant, in answer to plaintiff's inquiry in his exceptions whether said note for $751 was ever paid, answering, says, that said $751 has all been paid, $400 of said sum made payable in one year with interest, and the remainder made payable in two years with interest; the said $400 note was paid in cash, the remainder was paid by said Daniel's negotiating for and causing to be surrendered to me a note on which I was liable for my brother for about the same amount, and in some other trade between Daniels and the defendant not now directly recollected.

To plaintiff's further exception, because defendant did not answer in chief as to his information and belief whether said Daniels ever owned any stock in said company besides the two hundred and forty shares answered to in chief, defendant answering says, that from an inspection of the books of said company, he does believe that said Daniels did own forty-four shares of said stock, besides the two hundred and forty

shares already answered to in chief; that he bought it of N. A. Thompson on the third day of February, 1837, but what said Daniels paid for said stock, or how he paid, is entirely unknown to this defendant, and he has no information or belief about the facts above inquired of, except as above stated.

To plaintiff's exception, because defendant did not answer as to how and in what certain payments were made for said stock:

Defendant answering says, that he cannot recollect precisely at this distant day how or in what all these payments were made, and can only answer to his best knowledge and belief as to the general fact that the payments for the said stock were made at the time of the transfer, and more or less in money and services as testified to in his answer in chief. He cannot answer more particularly without consulting the stockholders themselves as to what they paid for their stock, a source of information equally open to the plaintiff as to this defendant. But said defendant, so far as his recollection will serve him, answering says, that said Sawin paid in part for his stock by his work as a wheelwright, and in particular by making one pair of wheels for said company for the transportation of large stones, for which the company paid him one hundred and eighty dollars; and all of the assessments not paid for in similar work was paid for by an endorsement of the same on the said company's note held by me, and said Sawin's notes were transferred to me for the same.

To the point of the capital stock of said company, from November nineteenth to December eighth, 1836, defendant answering says:

That said company commenced issuing stock on the twenty-fourth of October, 1836, and on the nineteenth of November, the said company were possessed of the said granite quarry, all made ready for operating, a spacious wharf for the purpose of transporting granite, a fine road from the quarry, and the making of which latter cost about one thousand dollars, a building about ninety feet long for hammering granite, a large blacksmith's shop, with several forges, and a full complement of tools for operating, a fine farm, a good house, and large barn connected with said quarry, trucks, wheels, carts, &c., and several yoke of oxen, all of the above real estate subject to a mortgage for the security of the purchase money.

The defendant further answering says, that a large part of the said purchase money had been paid at that time by the proceeds, the stock sales, and that valuable additions had been made to the means of said company at that time by the aid of the private means and credit of certain individuals of said company who had advanced funds to forward its operations, and that every dollar paid into said company for stock sales, or from other sources, had been duly appropriated for the purposes of forwarding its operations at Durham, or for extinguishing its debts; that all of the above facts, and the organization and whole condition of the company, was the subject of conversation, and its then present ability and future prospects fully discussed at an interview sought by said Warner with this defendant at his house, during the pendency of the

negotiation for the exchange of his farm for Daniels's stock. This interview was soon after the nineteenth of November, 1836, and but a few days after the first organized operations of said company, and while it was understood between us that the value of the stock lay rather in an estimate of the value of the quarry, as to its quality and facility for working, and transportation, and the demand for the article, than in the real intrinsic value of the property of said company, without regard to contingencies.

To plaintiff's exceptions, because defendant does not answer what note the payment of two thirds of the assessment on ten shares of A. D. Capen's stock was endorsed upon:

Defendant answering says, that the same was endorsed on said company note before referred to in this answer, and its origin and consideration is there stated.

To plaintiff's exception, because defendant does not answer as to what note the assessment on the one hundred and thirty-one shares transferred to Fales and Thompsons was endorsed upon:

Answering says, that said endorsement was on the said company's note before referred to.

To plaintiff's exception, because defendant does not answer whether any or what part of said funds paid in by said stockholders remained in said company's hands till the nineteenth of November, 1836, or till the eighth of December following:

Defendant answering says, that all of said funds so paid in were duly appropriated to the payment of the debts of said company, and for carrying on its operations at Durham; and further he cannot answer.

To the point whether the payments were made at Boston or Durham, the defendant answering says, that so far as his knowledge extends, the payments for the stock were made at Boston.

To the point whether said Daniels represented that said stock was worth its nominal value, the defendant answering says, that whether said Daniels so represented or not is entirely unknown to him; and to the point of the defendant causing such a representation to be made, the defendant answers, that he never made, or caused such representations to be made, as these complained of.

To the point whether defendant represented that said stock would pay a handsome dividend, the defendant answering says, that he does not know, and is not informed whether the said Daniels made, or caused to be made, any such representations as is there alleged, and that the estimates there referred to were simply estimates made between the defendant and said Warner, based upon the probable expenses and proceeds of a season's operation of the quarry, according to the price of granite at that time; and the dates on which said estimates were made, were not, to the belief of this defendant, fictions, or calculated to mislead the said Warner, any more than all mere calculations, which depend upon such contingencies as the state of the market, the prices of labor, &c., are calculated to mislead. And this defendant avers, that if they were data

calculated to mislead any one, this defendant was equally misled by them as said Warner.

To the point whether the defendant and Daniels represented that the company had a brig, agent, clerk, and a number of hands, &c., the defendant answering says, that he does not know, nor is not informed, whether said Daniels made or caused to be made any such representations as there complained of; and as to himself, he denies that he made or caused to be made any such representation as there complained of, except as contained in his answer in chief; and in answering so much of said exceptions as relates to the new matter then inquired of, whether the said company did not strongly contemplate buying a brig, &c., the defendant answering says, that some time after the said transaction between Daniels and Warner, the defendant and said Warner, at a casual meeting, discussed the subject of buying a brig, &c., for the transportation of the stone of said company from said quarry to New York and elsewhere, and it was suggested by the defendant, that in such case the said Warner would be a proper person to manage an enterprise; and this defendant does not recollect or believe that any such an enterprise had been contemplated or talked of previous to the trade with Daniels; and the defendant further answering says, that subsequent to that time the said Warner authorized the defendant to exchange his said stock for a vessel, and the defendant made such an effort, and succeeded in finding an opportunity to make such an exchange on favorable terms, and gave notice of the fact to said Warner, yet said Warner neglected to accede to and complete the said exchange.

To the point of the alleged representation about the contracts of said company:

The defendant answering says, that he does not know, nor has he been informed, whether or not said Daniels made any such representation as is there complained of; and, as to himself, he denies that he made or caused to be made any such representation, except as admitted in his answers in chief, or that he had any knowledge of these being made.

And as to the new matter there inquired of, the defendant, waiving his objections to said questions, answering says, that he made no unfounded representations concerning any contracts negotiated or made by said company; and as to the other contracts referred to by this defendant in his answer in chief, as under negotiation, this defendant does not recollect the nature of the same more fully or distinctly than communicated in chief.

To the point touching the purchase of the said land by defendant of Daniels, this defendant answering says, that the notes of the said company, which he passed to said Daniels for the said land, were part of the notes given by said company for the purchase money of said quarry, heretofore fully explained and answered to in this and the answer in chief; and this defendant further answering says, that, to the best of [his] knowledge, the said Daniels bought the said land in August, 1835, and held it by a warrantee deed, and that said Daniels had paid about

$10,000 toward the same at the time of the sale to the defendant, and that there was a mortgage to secure the payment of the balance of the purchase money, and that said Daniels transferred to this defendant the fee in said land, to be held in common and undivided, and that it was then encumbered as aforesaid; but since that time said encumbrances have been removed by said Daniels, and that this defendant immediately took possession of said land, and exercised acts of ownership over the same until 1837, when the defendant sold the same.

To the point that the said company was a fiction, this defendant answering says, that in 1835, at the time of the purchase of said quarry, &c., for $4,500, ¼ of the said sum was paid in cash; and afterwards, and during that and the fore part of the next year, large improvements, to the amount of several thousand dollars, as per answer in chief, were made on said estate; and at the expiration of one year from the time of said purchase, another quarter of said purchase money was paid; and at the time of the trade between Warner and Daniels, all the payment toward said land had been made—according to agreement, the balance was secured by a mortgage of the premises; that said original proprietors had a warrantee deed of said land; that about $40,000 of said notes for the purchase money of said quarry have been paid, and the remainder was secured to be paid by a second mortgage on the said premises, as before stated; and that the title given to said company was a warrantee deed, subject to the mortgage aforesaid—all *on* which facts were fully inquired into by said Warner, and the said facts fully made known to him before his said trade with said Daniels.

JOSEPH J. FALES.

Oct. 3, 1843. Filed at the rules.

[SEAL.] UNITED STATES OF AMERICA,
Massachusetts district, ss:

The circuit court of the United States, within and for the Massachusetts district, to John J. Clarke, esquire, of Roxbury, in said district.

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the depositions of such witnesses as shall be produced by either party, and by agreement of parties, by oral interrogations by the parties or their agents, to be used in a certain cause now pending in said court, wherein Samuel Warner is plaintiff in equity vs. Adams Daniels et al., defendants; and to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and, when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this sixth day of May, in the year of our Lord one thousand eight hundred and forty-five. FRANCIS BASSETT, *Clerk*.

I, Peter Harvey, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, merchant, of the age of about thirty-five years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, namely:

Interrogatories proposed by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Were you acquainted with the affairs and character of the Cleft Ledge Granite Company; if so, when and for how long a period; whether in and during the year 1836, and afterward; did you hold any office or offices in said company, and when and how long?

Answer. I was treasurer of the Cleft Ledge Granite Company for a few months, in the year 1836, I think. My acquaintance with the affairs of the company was very limited; I knew but little about it. I knew nothing about the affairs of the company, except during the time I was treasurer, which did not exceed the period of eight or ten months, I should think. They had an act of incorporation. Not more than one hundred or two hundred dollars were ever paid into the treasury, while I was treasurer, in cash.

2d interrogatory. How came you to take an office or any interest in said company; who induced you to do so, and by what persuasions; when did you retire from or resign said office or offices?

Answer. Doctor Fales, who was introduced to me by Julius A. Palmer, requested me to take the office of treasurer, and offered me five hundred dollars per annum for my services in that capacity, and told me George Odiorne was president. I knew the reputation of Mr. Odiorne to be good, and had some personal acquaintance with him. The salary offered me was the inducement for my accepting the office. I cannot positively say when I resigned said office; I think, however, some time in the year 1836.

3d interrogatory. What were the character and objects of said company; whether or not did it ever have, to your knowledge, and would you have been likely to know if it ever had, any actual capital paid in as capital stock of said company; whether or not [it] was a mere fiction, got up to cheat and defraud the public; and whether or not means were not taken, and shifts and artifices resorted to, to procure purchasers for the stock, and what these means and shifts were?

Answer. There was not, during my acquaintance with the affairs of the company, any capital paid in in money, and I think I should have been likely to have known it, if any money was paid in toward capital stock; whether or not it was a mere fiction I do not know. The result shows it was not of much value; the company desired me to take pay for my services in stock of the company, which I declined, and never

received any pay for my services, but declined taking any thing; I have no doubt my bill would have been paid if I had desired it; I do not know that it was got up to cheat or defraud the public. The *ostensible*, and for aught I know, the *real* object, was to get out granite for sale; I do not know that any means were taken, or shifts or artifices used or resorted to, to procure purchasers for the stock. Some individuals called on me to make inquiries about the value of the stock in the company, all of whom I cautioned not to buy stock from any thing I should say to them, for I knew but little about its value; and I further said to them, that my impressions in regard to its value were unfavorable.

4th interrogatory. Whether or not there was, at a meeting of the officers and directors of said company, an excited and angry discussion; when, or about when, and how long did it continue; and whether or not was the cause of said discussion the fact that none of the officers of the company had declared, or omitted to make so strong and favorable representations of the condition and prospects of the company, as the directors in general deemed necessary?

Answer. I was not present, and have no personal knowledge of any such discussion.

5th interrogatory. Was it or not a practice with any of the directors and with the defendant, J. J. Fales, in endeavoring to put off the stock of said company, to refer the expected purchaser to some of the officers for information as to the condition of the company; and was, or not, the discussion in the last preceding interrogatory inquired of, caused by said officers; if so, what officers declin*ing* to give such an account of the company as Fales wished to have given?

Answer. I do not know.

6th interrogatory. Whether or not did any of the said officers, and whom, resign their offices, and refuse to have any thing more to do with the company; and if so, who were those officers, and what were the reasons and causes of such resignation?

Answer. I know of no resignation except my own; and I have before stated, as nearly as I can remember, the time when I resigned. I resigned because I did not think that the business was managed on proper principles.

7th interrogatory. Was it or not the practice of said Fales to go about the country seeking [who] he might entrap into becoming purchasers of the stock of said company?

Answer. I do not know.

8th interrogatory. State, if you recollect, any instances in which persons, and what persons, about to become purchasers of said stock, were deterred from doing so by your representations or intimations of the actual character of the company?

Answer. I do not know that any persons were deterred from purchasing stock by any representations made by me, or any thing that I said or intimated.

Cross interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and J. J. Fales, they first objecting to all of said direct interrogatories as irrelevant, incompetent. and leading.

The defendants, without waiving their objections, propounded the following cross interrogatories de bene esse:

1st cross interrogatory. If you say, in answer to the first interrogatory, that you was acquainted with the officers of the company, please to state what your means of knowledge were; were you in the habit of attending the meetings of the company; when, how often; were you ever at Durham?

Answer. I was but little acquainted with the affairs of the company. All the acquaintance I had with it was derived from keeping the books of the company. I attended but two of the meetings of the company, according to the best of my recollection. I do not remember at what time those meetings were held, but during the time I was treasurer. I never was at Durham.

2d cross interrogatory. Did you have any difficulty or variance with any of the members of said company; if so, who?

Answer. Never.

3d cross interrogatory. If you impute any fraudulent intention to any member of said company, in connection with said company, please to detail fully every fact within your knowledge, on which you found your opinion?

Answer. I do not impute any fraudulent intention to any member of said company in connection with said company, or otherwise.

4th cross interrogatory. If you attempt, or have attempted, to give any opinion about the condition and prospects of the company, please state to what particular time your remarks relate; at what time did the company suspend business; at what time did your connection with the company cease? Did you know any thing about its doings after you left it?

Answer. All that I have said relates to the time during which I was treasurer as aforesaid. I do not know at what time the company suspended business; and I do not know that they ever did suspend business. I have before stated, as near as I can, when my connection with the company ceased; it was some time in the year 1836; but I am not able to state in what month. I knew nothing about its doings after I left it.

5th cross interrogatory. Have you ever had a quarrel, difficulty, or variance, with Mr. Fales, or any other member of said company; (the witness is not requested to state the reasons of any variance that he may testify to;) if so, with whom was it?

Answer. I have not.

6th cross interrogatory. If you attempt to state what said Fales, or any one else did, in endeavoring to put off the stock, please to state how you know every fact that you testify to in relation to that point. Did you go with him, or how came you to be possessed of the information?

Answer. I have no knowledge upon the subject matter of this interrogatory.

7th cross interrogatory. If you attempt to give the reason why any of said directors resigned, please to state how you know that those reasons influenced them?

Answer. I do not know that any directors ever did resign.

Additional direct interrogatory propounded by J. P. Bishop, esquire, solicitor for Samuel Warner.

If, in answer to the fifth cross interrogatory, you say that you ever had a difficulty or variance with Mr. Fales, or any other member of said company, please to state whether that difficulty or variance, if any, did not grow out of the conduct or management of said Fales, or other member, in relation to the affairs of said company; and if it did so, then please to state all the circumstances about it?

Answer. I never had any difficulty or variance with Mr. Fales, or any other member of said company, that I recollect; and I do not remember that I ever had any conversation with Mr. Fales of an unpleasant character.

PETER HARVEY.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

On this twenty-first day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Peter Harvey to come before me, in Roxbury, in the county of Norfolk, in said district, and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence, and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, Ezra Wilkinson, of Dedham, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, namely:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Where do you reside, and what your business?

Answer. I reside in Dedham, and I am a counsellor at law.

2d interrogatory. Were you ever acquainted with a corporation called the Odiorne Company, or the Odiorne Manufacturing Company, in Southbridge, or Sturbridge, in the county of Worcester? If yea, will you state when said company was formed; who by? Who was the originator of the project of forming said company? What was the value of the stock in November, 1836; or at any time in 1836? Was or not

Adams Daniels, or Joseph J. Fales, ever a stockholder? If yea, to what amount? When did they become so?

This question is objected to.

Answer. I knew there was a corporation in the town of Sturbridge, in the county of Worcester, called the Odiorne Company, or Odiorne Manufacturing Company, but I know nothing of its concerns. I do not know when it was formed, nor who by; nor who was the originator of the project of forming said company; neither do I know the value of the stock of said company in 1836, or at any other time in 1836. I do not know that either Daniels or Fales were ever stockholders, of my own knowledge.

3d interrogatory. Have you ever had any knowledge of a pretended company who called themselves the Cleft Ledge Granite Company? If yea, of whom did the same, so far as you know, consist?

This question is objected to.

Answer. All the knowledge that I have of a company, or pretended company, called the Cleft Ledge Granite Company, is derived from having in my possession, as one of the administrators of the estate of the late Josiah J. Fisk, esquire, certificates of stock in such a company, and from hearing it talked about; I do not know who composed the company.

4th interrogatory. Have you any of the stock, or what purports to be the stock, of the company last inquired about? If so, to what ostensible amount? Will you annex the same, or a copy of one certificate; and if you have in your possession more than one, state whether the one or copy is like the others except numbers? If you have different stamps or emissions of said stock, will you give a copy of each kind; or, if you would have no objection, the plaintiff would prefer the whole budget, more or less, if any you have, annexed? We agreeing to pay to whom it may concern, their value if lost.

This question is objected to.

Answer. I took possession of certain certificates in the Cleft Ledge Granite Company, as one of the administrators as aforesaid, the ostensible amount whereof I do not remember. I find, by the inventory, that they were appraised at five thousand dollars. I do not find any of the certificates among my papers, and presume that I delivered them to Linas Child, who is joint administrator with me; and that he now has them, as the said stock has never been sold. I, therefore, cannot annex them, or any one of them. I do not remember whether or not all the certificates were alike; whether of the same stamp or emission, or otherwise. My impression is, that the appraised value given above is less than the nominal value of said stock.

5th interrogatory. What is the value of said last named stock; what has been its worth since you have known it? When did you first know any thing about it; who then had it?

This question is objected to.

Answer. The stock is worth nothing; and has not been worth any thing since I have known it, so far as I know, or have been able to as-

certain; I was appointed administrator October, 1838, and knew nothing about the stock until I was so appointed; I soon learned that it was valueless.

6th interrogatory. Did you or not ever know of any trade or exchange being made by any persons between said Odiorne stock and said Cleft Ledge stock? If yea, who were the contracting parties?

This question is objected to.

Answer. I do not know, and I did not know, of any such trade or exchange of my own knowledge.

7th interrogatory. At the time of such trade or exchange, what was the actual value of the Odiorne stock? What was the amount of their debts; what their assets?

This *objection* objected to.

Answer. I do not know.

8th interrogatory. Were you executor of the last will and testament of Josiah J. Fiske, esquire, of Wrentham?

This question is objected to.

Answer. I was one of the administrators of the estate of said Fiske; he left no will.

9th interrogatory. Have you or not now, or have you as executor ever had, in your possession any of said Cleft Ledge stock as assets of said Fiske? Do you or not know of whom said Fiske obtained the same? In what property did he pay for the same; when was it; where was it?

This question is objected to.

Answer. I did have in my possession as I have above stated, as administrator, certain certificates of the stock of the Cleft Ledge Granite Company, as assets of said Fiske, but have not any of such certificates in my possession at this time. I believe that my associate administrator has them now in his possession; I do not know, of my own knowledge, of whom said Fiske obtained the same; and to the rest of this interrogatory I answer, that I do not know.

10th interrogatory. Did you or not find said Fiske at his decease, or at any time before, by inspection of his papers and documents that came to your hands as executor, to have been a large proprietor both in the Odiorne and Cleft Ledge Companies?

This question is objected to.

Answer. I did as administrator.

11th interrogatory. What have you, as executor, ever done with said stock? If sold, what did it bring? If not sold, what have been the dividends?

This question is objected to.

Answer. I have never done any thing with said stock, and so far as I know, Linas Child has not; there have been no dividends thereon.

12th interrogatory. Which do you think from your knowledge of the same would have been the most valuable at any time since November, 1835, the certificates of the said Cleft Ledge, or the said Odiorne, or

the same quantity of good clean white paper that would be necessary to stamp off such certificates?

This question is objected to.

Answer. Since it came into my hands I should think clean white paper the most valuable; before that time I knew nothing about it.

13th interrogatory. Have you or not in your possession any letters or written communications from Adams Daniels or Joseph J. Fales to said Josiah J. Fiske, relating to either of said kinds of stock; if so, will you annex the same, or a copy of such as relates to said stock?

This question is objected to.

Answer. I have not to my knowledge; I have never seen any. There are a large quantity of papers at Mr. Fiske's former residence in Wrentham, that I have never examined very thoroughly; there may be such letters among said papers, but I do not recollect to have seen any.

14th interrogatory. Please state any other matter within your knowledge which may throw light upon the subject of enquiry, or benefit either of the parties in said suit.

This question objected to.

Answer. I do not know that I am possessed of any knowledge that would throw light upon the subject of enquiry, or benefit either of the parties in said suit, other than I have before stated.

Cross interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and al., defendants, de bene esse, they first objecting to all of the said direct interrogatories as incompetent and irrelevant.

1st cross interrogatory. Do you know of any thing of your own knowledge about the character, standing, and prospects of the Cleft Ledge Granite Company, or the Odiorne Company, in the fall of the year 1836? If yea, please state now you become possessed of the information.

Ans. I do not.

2d cross interrogatory. If you say that you do know something of your own knowledge of those companies in that respect at that time, do you know of your own knowledge that Adams Daniels had any agency in getting up said companies, or was concerned in any thing testified to by you? If yea, how do you know it?

Please to state whether or not you are counsel for either of the parties in this case, and if yea, will disclose nothing communicated to you in that relation.

Answer. I know nothing about it. I have been counsel for Adams Daniels, and I suppose that he still considers me as his counsel.

EZRA WILKINSON.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

On this twenty-second day of May, in the year eighteen hundred and

forty-five, by virtue of the annexed commission, I caused Ezra Wilkinson to come before me, in Dedham, in the county of Norfolk, in said district; and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence, and the same answers were by me reduced to writing in his presence.

JOHN J. CLARK,
Commissioner.

I, Samuel Warner, jr., of Wrentham, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about 28 years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Have you or not ever purchased of the plaintiff any of the shares in a company called the 'Cleft Ledge Granite Company?' If yea, state how and what you paid for them. If nay, state fully how the same were transferred to you, and for what purpose; what interest you ever had in the same, if any; and all you know about said transfer.

Answer. I never purchased any such shares of the plaintiff, or any other person; my father, Samuel Warner, the plaintiff, gave me some shares in a company called the Cleft Ledge Granite Company; I paid nothing for them, and never agreed to pay any thing for them. I believe about five certificates of stock in said company were transferred to me by my father, by an assignment written on the back of the certificates; they were transferred to me as a mere gift. I know of no particular purpose of their being thus transferred to me, other than this: I was about removing from Providence to Wrentham, where I intended to reside, and my father told me I might have some of the Granite stock, if I wanted. I told him he might do as he pleased; and he transferred, at that time, about five certificates of stock in that company; but I do not remember how many shares those certificates included. A year or two after that, I should think, my father came to Wrentham, and, during his stay there, he passed over to me a bundle containing certificates of the same stock; I believe all the certificates he had remaining. Whether these last certificates were assigned or transferred to me, I do not know. I do not think that I ever examined for the purpose of informing myself whether or not they were assigned. I never had any other interest in the same, and I have above stated all that I know about said transfer.

2d interrogatory. Do you know the reasons, or any reasons, why this suit was not brought at an earlier day, or why same suit against said Daniels, by your father, for the recovery of his farm, was not brought sooner? If yea, state fully and particularly.

Answer. John H. Hancock, since deceased, attempted to have Joseph J. Fales indicted for obtaining property by false pretences, he having received of said Fales stock in this same Granite Company in exchange for cotton batting. I think this was at the September term of the C. C. P., 1840, at Dedham; and my father waited until the result of this proceeding of said Hancock should be ascertained, before he should commence a suit against said Fales or Adams Daniels; and because it was not known that he had any remedy until a short time before this suit was brought.

Cross interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and J. J. Fales, they first objecting to all the direct interrogatories addressed to said Warner, as being incompetent, irrelevant, and secondary, and intended to control a written instrument. These interrogatories are put de bene esse.

1st cross interrogatory. Have you any certificates of stock in the Cleft Ledge Granite Company? Have you ever had any? When did you have them? How long did you have them in your possession? How and when were they transferred to you? How much stock was represented by said certificates?

Answer. I believe I have, and all that my father gave me. Some of them, those five certificates mentioned in my answer to the first direct interrogatory, were received by me in August or September, 1838, I think; the remainder were received by me a year or two afterwards; I have had them in my possession ever since; five of the certificates were transferred to me by an assignment written upon the back of the certificates, I think; whether or not the remainder have ever been transferred to me otherwise than by my father putting them into my hands, I know not; I do not know how much stock was represented by said certificates.

2d cross interrogatory. Was not that stock transferred to you on the books of the Cleft Ledge Granite Company? Where was it so transferred to you?

Answer. The second lot of certificates that were given to me by my father were transferred on the books of the Cleft Ledge Granite Company, in Boston; I do not recollect when. I do not know whether or not the shares contained in the five certificates first given to me were transferred or not on the books of said company; I think not.

3d cross interrogatory. Have you ever transferred said certificates of stock to any one else? To whom? When? What consideration was paid you for the transfer? Has the transfer ever been entered on the stock books of the company?

Answer. I have no recollection of ever transferring said certificates of stock, or any one of them, to any one.

4th cross interrogatory. If you say said stock was transferred to you in trust, or any thing of that nature; if that agreement was in writing, annex the same, or a copy, to this deposition.

Answer. Said stock was not transferred to me in trust, or any thing

of that nature; and there was no writing given in relation to it, or agreement, oral or written, except the usual assignment above mentioned, endorsed upon the certificates, or such of them as I have before mentioned; considering them of no value, I took no interest scarcely in them?

5th cross interrogatory. Was not your father in debt when he transferred said stock to you? Did he not do it to prevent its being seized by his creditors? Did you, after the transfer, call it your father's stock? To whom did you communicate that it was still your father's? When did you do it? Where did you do it?

Answer. My father, I presume, was in debt when he transferred said stock to me; I think he did not do it to prevent its being seized by his creditors; I think it very probable that I have since the transfer called it my father's stock; I do not recollect to whom I so communicated; nor when nor where.

6th cross interrogatory. Did you ever offer said stock for sale? Did you ever sell any of it? Or bargain any of it away? Did you ever transfer any of it to any one besides your father?

Answer. I think I have offered it for sale, but not seriously. I never sold any of it, or bargained any of it away. I never have transferred any of it to any one. I have passed it all back to my father.

7th cross interrogatory. Are any of said certificates of stock in your possession? If yea, annex the same to this deposition. If you say you have parted with the possession of the same, give a literal copy, as near as you can, of said certificate or certificates, and of the several transfers. If there are any erasures upon said certificates, state what has been erased, and all about it.

Answer. Not one of said certificates of stock are in my possession, and I cannot annex them, or any of them, to this deposition; and I cannot give copies of said certificates, or any one of them, nor of the transfers. I have an impression that on the face of the first five certificates there was an erasure in the number of the shares which the certificates represented, but I am not certain; but I do not recollect the number before or after the erasure. I took very little notice of them.

8th cross interrogatory. When said certificates stood in your name on the books of the company, and were in your possession, was there any restraint upon your selling the same? Could you not have sold them, if you had chosen to?

Answer. I did not feel authorized to sell the same without the consent of my father; I mean to say, that I should not have sold them without taking his advice. I do not know whether or not there was any restraint upon my selling the same. I could not have sold them if I had chosen to, because I could not have found a purchaser. As to the first five certificates, I suppose I was at liberty to sell them, if I had chosen to, as an agent of my father, or as his attorney; and, as to the rest, I supposed I had a general agency to sell in like manner.

9th cross interrogatory. Do you not know that your father once sold

164.

his stock that he bought of Adams Daniels; or a part of it; or bargained it away?

Answer. I know that my father once made a conditional trade of his stock that he bought of Adams Daniels; and then he sent to me for the certificates which I had, and I sent to him the five first certificates, which were all that I then had.

10th cross interrogatory. If you attempt to give any reason why your father's suit was not brought sooner, state how you know those reasons influenced your father's mind? Do you know so from any body else than him? Are you testifying to what you know, or only believe?

Answer. I know it only from him.

I have stated in my answer to the first direct interrogatory, that the first five certificates were a gift; I mean to say, that they were passed over or transferred to me for the sake of inquiring about their value, and that, if they were found to be of value, I might dispose of them as an attorney or agent of my father; and, as to the others, although nothing was said about it at the time I received them, I presume that the same was the case with them.

I have said, in my answer to the first cross interrogatory, that I believe I have certificates of stock in the Cleft Ledge Granite Company, and all that my father gave to me. I was mistaken. I now remember that I have passed them over to my father; and I wish to correct my answer to the third cross interrogatory, to make it correspond to what I have just above stated; and I answer farther, that the first five certificates were sent in to my father, when he sent out for them, about the time he was trying to make the conditional trade before spoken of; I cannot tell when that was; the remainder were handed back to my father a considerable time afterward; I cannot tell how long after; they were not transferred by me, by any writing on the back, or any writing at all, but merely sent to him as I would send a newspaper; nothing was said to me for such returning of said certificates to my father; I do not know whether or not any transfer from me has been entered on the books of the company.

SAMUEL WARNER, Jr.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this twenty-second day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Samuel Warner, junior, to come before me, in Wrentham, in the county of Norfolk, in said district; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing, in his presence.

JOHN J. CLARKE,
Commissioner.

I, Caleb Whiting, of Blackstone, in the county of Worcester, and Commonwealth of Massachusettes, of the age of about fifty-three years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, namely:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Have you or not ever had any conversation with either of said defendants, or heard either of them in conversation with other persons, concerning a company or corporation which they called the 'Cleft Ledge Granite Company?' If yea, with which of said defendants had you such conversation; or which held such conversation with others in your hearing; with whom was said conversation; when, and where was it; who else was present? State particularly the whole conversation.

Answer. I never had, or heard any conversation with Joseph J. Fales; but have had several conversations with Adams Daniels, at different times, and at different places, concerning a company or corporation, called the Cleft Ledge Granite Company.

The first conversation was in the yard, near, or under the woodshed of Captain Warner, in Wrentham, in November, 1836; between said Daniels, said Warner, and myself, no one else was present. Captain Warner introduced me to Mr. Daniels, and observed to me that Mr. Daniels would like to purchase my farm; and that h · was about to, or had purchased his farm; and that said Daniels would like to change some Granite stock for the farm, which lay in New Hampshire, at the head of Oyster river. I inquired the situation of the ledge—how far from market. Daniels observed, that it was some ways from market, but that it was water carriage, so that it could be got to market cheaper than the Quincy granite could be got into Boston; and that the ledge lay in such a situation, that it would not cost so much to get it out as other ledges, or any other ledge; that it lay in layers, of different thicknesses—suitable for all uses except for large pillars—and that they had had samples of it in Boston, and in New York, that were pronounced by judges to be granite of excellent quality, and as good as had ever been in the market; and that they had made contracts with Government for a large quantity of stone for public uses, to be delivered at Portsmouth, and at Newport, if my memory serves me, I will not be positive that both of said places were named, but I am positive that one or the other of those places were named; and that they had made a contract, or were about making a contract, I am not certain which, for a large quantity of it in New York; and that they were going to operate upon the ledge in the spring, and if it was well managed, there was no doubt the company would make the sum of which sum I do not remember, though he named a sum, as I distinctly remember, and it was a large sum. I asked him the situation of the ledge at that time; he said it had been operated upon, and that considerable granite had been got out. He observed to me that they had built a wharf, and

had got a gondola to carry the stone a short distance from the wharf, a short distance down the river, to put on board a sailing vessel—as sailing vessels could not get up to the wharf; that the company owned the wharf and the vessels, and that they had a blacksmith's shop, and tools, and every thing to work with. I asked him what he considered the real value of that ledge; he stated to me, that if I wanted to know the intrinsic value of the shares, that they were worth the full value, dollar for dollar, or more, and that it was as good as money at seven per cent.; that he considered it the best stock in the market. I asked him, if that stock was so good, why he wished to exchange it for my farm? He told me that he was going into the silk manufacturing business, and that Captain Warner's farm was not quite so large as they wanted, and that my land was the right kind for mulberry trees; I told him I would think of it, and he could see me again. This is all the conversation that I recollect that happened at that time, in which said Daniels participated.

About a week after, said Daniels came to my house, and wanted to know if I had made up my mind to trade with him. I told him I had determined not to trade with him for granite stock--he then observed to me that he had a note against the company, that he would put to me for my farm. I asked him if the company were good for a demand against them—he said they were, and would cash a demand against them at any time. I then asked him whether the private property of the stockholders in said company was holden to pay the debts of the company. He said it was. I asked who the company were; he replied, Mr. Odiorne, Josiah J. Fiske, Doctor Fales, and named quite a number of others, whose names I do not recollect. He said that Mr. Odiorne was president of the company. I told him that I would look into it, and if I could satisfy myself that the stockholders' private property was holden to pay the debts of the company, that I would exchange my farm for the note. He then stated to me, if I would go to Boston, he would satisfy me that the stock was as good as he had represented it to me, and that the company was good for any debts that were against them, and would pay the cash any time when called for, on demand against them. I stated to him that I could not, at that time, go to Boston; he said he should be up again in a few days, at Captain Warner's. This is all the conversation that I recollect at this time; no one was present. Mr. Daniels and myself were by ourselves.

A short time after, I saw Daniels again at Captain Warner's; Captain Warner was present, and I do not recollect that any other person was present. I made an arrangement with Daniels to meet him at the Lamb tavern, in Boston, for him to satisfy me that the company and stock were as good as he had represented it to be; he agreed to pay me for my time and expenses, if I would go down to Boston, and he did not satisfy me that the Granite Ledge stock, and the company, were as good as he had represented them to be. At the time appointed, I went to Boston. He did not meet me there. I staid there, at the Lamb tavern, all that day, and until nine o'clock in the morning of the next

day, and he did not come. I have stated all the conversation with Daniels at this time, that I remember.

About three months afterward, perhaps not more than two months, I called upon Daniels, at Medway, for payment for my time and expenses in going to Boston, at the time before stated; he refused to pay me, on the ground that he should have satisfied me if he had been there. After some words, he paid me about half of my bill, and said to me if he did not sell at least one thousand dollars worth of said stock within six months, (I should think was the time named,) that he would give me as good a beaver hat as could be bought; no one was present.

I do not recollect having, or hearing any other conversation with said Daniels, concerning said Cleft Ledge Granite Company, other than I have above stated.

2d interrogatory. Have you or not ever heard either of said defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom? When, and where? Who was present? What were their statements?

Answer. Nothing more than I have stated in my last answer, except that said Daniels represented the stock aforesaid to be better than bank stock, in all, or nearly all of the conversations above mentioned.

3d interrogatory. Have you or not ever heard either of the defendants make any representations concerning the property of said company or corporation? If yea, what property did they say said company owned? What was their whole statement about said company's property? When, and where was it? Who was present? To whom was such representation made?

Answer. Nothing more or farther than I have stated in my answer to the first interrogatory above.

4th interrogatory. Have you or not ever heard either of said defendants speak of, or make any statement concerning, any contracts of said company for furnishing stone? If yea, what contracts did they or either speak of? To what amount? With whom? State particularly all that was said by either, and to whom it was said, with the time and place, and persons present.

Answer. I have stated all that I can in answer to this interrogatory, in my answer to the first interrogatory above; to which answer I refer for an answer to this interrogatory.

5th interrogatory. Have you or not ever heard either of said defendants make any statement of their willingness to guarantee said stock to pay a handsome dividend to its stockholders, or say any thing about dividends upon said stock? If yea, state particularly and fully all either of them said, with the time and place, who was present, and to whom it was said.

Answer. Mr. Daniels, at the first interview mentioned in my answer to the first interrogatory, and also at the second conversation therein mentioned, said he was willing to guarantee that the stock would pay a handsome dividend to the stockholders; he said this to me, at the first time in presence of Captain Warner, and no one was present the second

time; I never had any conversation, or heard said Fales say any thing about the company.

6th interrogatory. Have you or not ever heard either of the defendants make any statement with regard to the indebtedness of said company? If yea, state particularly and fully what they said, with the time and place, who present, and to whom said.

Answer. Mr. Daniels said to me, at the first conversation mentioned in my first answer above, that the company owed no more than they would be able to pay that season from the profits of the granite that they would get out; and that they would make a handsome dividend to the stockholders besides; Captain Warner was present at this time, but no other person.

7th interrogatory. Have you or not ever heard either of the defendants make any statement concerning the number of hands said company employed in getting out rock? If yea, state particularly and fully all that was said by either, when and where, and who was present, and to whom said.

Answer. I did hear Mr. Daniels state the number of hands that had been employed in getting out rock; and the quantity of rock that said number of hands would quarry in a day; but I do not recollect the number of hands which he stated; it was small, however, in comparison with the rock which he represented they would get out—not more than seven or eight, as I think; this was at Captain Warner's, in his presence, at the first conversation before mentioned; he made this statement to me; I never heard Fales say any thing about it; I never saw Fales to speak with him from the time that Warner sold his farm till now; and have never seen him but once, and then passed him in the street in Boston.

8th interrogatory. Have or not said defendants, or one of them, ever proposed to sell or exchange with you some shares in said company's stock, or some of said company's notes for property of yours? If yea, state particularly and fully all the conversation between you and either of the defendants upon the subject, and what was done by you and either of them towards such negotiation.

Answer. Yes, as I have above stated in my answer to the first interrogatory.

9th interrogatory. If either of the defendants ever made such proposition as enquired of in the last interrogatory, what use did they say they wished to make of your property?

Answer. I have answered this question in my answer to the first interrogatory above.

10th interrogatory. Have you or not ever, at the request of either of defendants, taken any measures to ascertain the value of said stock, or said company's notes? If yea, what? And did you or not ever report to either of the defendants the information respecting said stock or notes you had gained? State when and where you made inquiries, what you learned, and what you reported to the defendants, or either of them,

when and where, &c.; and what reply either of the defendants made to your report to them of the result of your inquiries.

Answer. I did, at the suggestion of Mr. Daniels, (he referring me to Mr. Odiorne to obtain information in relation to the value of said stock,) call upon Mr. Odiorne, in Boston, at the time I went to Boston to meet said Daniels at the Lamb Tavern, some time in November, 1836, and inquired of him the value of the Granite Ledge at the head of Oyster river, New Hampshire. He advised me to let it alone, and said he did not think it worth any thing, and that he did not think it would be worth any thing in my day or my children's day; on my asking him what a demand against the company was worth, he replied that it was not worth any thing; I then, on same day, went to three different stone yards in Boston; at the first, I got no information; at the second, the hands referred me to the third; at the third, I found two men who had worked on this ledge; they stated that it was not good for any thing, and probably never would be, and gave reasons satisfactory to me that it never would be. About two or three months after, I reported to Mr. Daniels the information I had thus received, and from whom I received it, except that I did not state the names of the persons in the stone yard, (because their names were not known to me,) and in the manner, and in the same words that I now state it; it was at his store in Medway; he replied, that if he had been with me he should have satisfied me, for that all which he had stated to me was true.

11th interrogatory. Did or not either of said defendants, in your hearing, express any reluctance to selling the stock they had in said company, and assign any reason which induced them to do so? If yea, state particularly and fully all that was said by either of them.

Answer. No; but Daniels appeared to want to sell the stock.

12th interrogatory. If you ever inquired of either of the defendants why they wished to sell so valuable stock, what reason did they assign?

Answer. Mr. Daniels said he had made himself responsible for so much money, that he wished to get his property into cash to pay his responsibilities, as a reason for desiring to sell his stock.

13th interrogatory. Did you or not ever hear either of defendants say any thing about the individual liability of the stockholders in said company to pay the company notes? If yea, state fully all that they said.

Answer. I have answered this in my answer to the first interrogatory, to which I refer.

14th interrogatory. If you ever had any conversation with either of the defendants about their prospect of selling any more of said stock than they then had sold, what was the whole said by you or them? State fully, when, where, &c.

Answer. Mr. Daniels said to me, that, if he did not sell one thousand dollars' worth of this stock within six months, for cash, at par, he would give me as good a beaver hat as could be bought; this was said at Medway, when I called to get my pay for going to Boston, as is stated in my answer to a previous interrogatory.

15th interrogatory. Have you or not ever seen either of the defend-

ants exhibit any papers purporting to be representations concerning said company or its property? If yea, what papers were exhibited by them; to whom were they exhibited; when and where was it; what was said by either of them about the papers?

Answer. Daniels shew me a report of Dr. Jackson that he made to the company, or some one else, of his examination of said ledge, at Capt. Warner's, the second time I saw Daniels at said Warner's, which is stated in my answer to the first interrogatory above; I am not positive, on reflection, whether Daniels or Warner exhibited it to me; but Daniels either exhibited it to me, or referred me to said Warner for it; I do not recollect what was said by said Daniels about this report; I never had any conversation with Fales about it, neither did he ever exhibit any papers of any kind to me.

16th interrogatory. If you ever heard either of the defendants say any thing about said company owning a brig or other vessel, or about employing any person to sail said brig, and look after their navigation, state particularly and fully all either of the defendants said upon the subject, with the time, place, &c., and to whom said.

Answer. All that I have heard, or recollect of hearing, in relation to this interrogatory, I have stated in my answer to the first interrogatory above, to which I refer; on reflection, I do recollect that Mr. Daniels said that perhaps Capt. Warner might be hired to take charge of the vessel to carry the stone to market to New York and other places; this was said to me at either the first or the second conversation at Warner's that I have mentioned in my first answer above, to which I refer.

17th interrogatory. If you ever heard either of the defendants compare the value of said company's stock with any other stocks, state fully all either said upon the subject; give time, place, &c.

Answer. I have stated all that I know upon the subject matter of this interrogatory in my answer to the first interrogatory, to which I refer for my answer to this interrogatory.

18th interrogatory. If you ever heard either of the defendants say any thing about said company having large contracts for furnishing stone, with whom did they say said contracts were; to what amount; for what use did they say said contractors wanted said stones; give time, place, &c., and to whom said.

Answer. Daniels said they had made a contract with Government to supply stones for a Government work, as I have stated in my first answer, to a considerable amount, which I think he stated; but I do not recollect the amount which he stated; the time and place appears in my former answer; it was said to me.

19th interrogatory. Are you or not acquainted with a farm situated in Franklin and Wrentham, on which the plaintiff formerly lived, which was by him deeded to the said Daniels in the year 1836? If yea, what was the value of the farm and out-lands belonging to the same at that time? Have you or not ever heard either of the defendants state the value of the same; or have you or not ever heard either of the defendants state what said farm and out-lands cost them, or either of

them; or what said farm stood them at, by the way or manner they got it? State fully all the conversation upon the subjects as particularly and fully as if specially interrogated upon each and every part of your and their conversation with either of the defendants, giving the time and place, &c.

Answer. I am well acquainted with said farm, and have been acquainted with it all my life time, until within a few years, say four or five years; the value of said farm and out-land, in 1836, was, I should think, not far from five thousand dollars; I never heard either of the defendants state the value of the same; if I recollect right, Mr. Daniels stated to me that the farm was considered in the trade as good as six thousand dollars, and he considered it as good as cash; I do not mean to speak positively of this last; this statement was made at the first conversation mentioned in my first answer, in presence of Capt. Warner.

Cross interrogatories proposed to Caleb Whiting, de bene esse, by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales, said defendants objecting to all the plaintiff's interrogatories as incompetent and irrelevant, except the 19th.

1st cross interrogatory. Do you know Joseph J. Fales; did you ever have any negotiation with him about the Cleft Ledge Granite Company stock or notes, or ever hear him make any representations about it whatever?

Answer. I do know, or used to know, Dr. Fales; I do not know whether or not his name is Joseph J.; he is son of David Fales; I never had any negotiation with him about the Cleft Ledge Granite Company stock or notes, nor ever heard him make any representations about it whatever.

2d cross interrogatory. At what season of the year was it that Daniels first talked to you about buying your farm? Was it in the spring of the year? How long was it before Warner moved off of his farm? Was it not about the time farmers begin their spring's work? What year was it in?

Answer. I think it was in the spring of the year 1836, but am not certain; it was some three or four months before Warner moved off of his farm; I think it was not about the time farmers begin their spring's work; but I cannot tell.

3d cross interrogatory. Did not Mr. Warner introduce Daniels to you? Did he not tell you that he had been telling Daniels that you wanted to sell your farm, or something to that effect?

Answer. Yes.

4th cross interrogatory. How is your farm situated with reference to Warner's? Is the location of the two farms such, that if one person owned both, a division could be made advantageously to both farms? Was any thing said about that between you, Warner, and Daniels, at that interview, or at any other? What advantages would there be in throwing the two farms into one and dividing anew? Can you swear positively that you remember that Daniels then said he wanted your

farm for raising silk, or any other particular purpose, except for dividing as above stated? If you say you can so swear, state what leads you to recollect it? Has Warner, or any one else, ever suggested to you that Daniels wanted the farm for the silk business? State what suggestions about that have been made to you, and all about it.

Answer. My farm, or that which I owned at that time, lay on the opposite side of the road from his. The location of the two farms is such, that if one person owned both, a division could be made advantageously to both farms. Mr. Warner mentioned to Mr. Daniels, at the first or second interview mentioned in my first answer, that if he owned both farms, by building another house, they could be made into two with good advantage. The Warner farm had a house on one corner of it; it was narrow and long; by adding more to it at the upper part, against where my farm lay, two farms could be made of it, by building a house on the upper part of his farm; in going from his house where it *then* stood, and *now* stands, it was something over a mile to the farther end of his farm, and was up hill all the way; he had a great way to go to work, and he was obliged to cart his manure a long distance, up a very bad hill, to his tillage land, which would be obviated in the manner I have suggested, if both farms were owned by the same person; the greater part of the hay cut was near to his house, and if he owned my farm, he could get hay enough for the upper part of his farm from my land near to it; I am positive that Daniels said that he wanted my farm for raising mulberry trees, to go into the silk manufacturing business; I recollect it because it was his common talk, and he said a great deal about going into the silk business. Warner stated to me that Daniels wanted the farm for the silk business; that the upper part of his farm was like mine, and well adapted to the mulberry tree.

5th cross interrogatory. Did you or not want to sell your farm? Have you since sold it; and when, and for what price?

Answer. I did then want to sell my farm; I have since sold it, in the latter part of 1840, in December or January, 1844, for 1,800 dollars.

6th cross interrogatory. Did Daniels say if he bought your farm, he had nothing but a note of the Cleft Ledge Granite Company to pay in? Did Daniels tell you that the company would give you stock for that note?

Answer. I do not recollect that he did say, if he bought my farm that he had nothing but a note of the Cleft Ledge Granite Company to pay in; he offered me nothing but such a note or stock; and he said that the company would give me stock or cash for the note.

7th cross interrogatory. Did Warner appear desirous that you and Daniels should trade? Did Daniels make what statements he did make in the presence of Warner? Did Warner assent to Daniels' statement? Did Warner state the prosperous condition of the company as strong or stronger than Daniels?

Answer. Yes.

8th cross interrogatory. Did not Daniels, throughout his negotiation with you, negotiate entirely with reference to your making an investi-

gation into the condition of the company before you traded? Did not Warner profess then to know all about the affairs of the company? Did Daniels manifest the least anxiety to trade with you, until you had made your own examination? Did he not give you the names of the directors, &c.? Offer to pay your expenses while examining, &c.? Did he not pay your expenses while examining into the affairs of the company?

Answer. I hardly know how to answer the first part of this question; to the best of my judgment, I do not think that he did negotiate with me, throughout his negotiation with me, entirely with reference to my making an investigation into the condition of the company before I traded. Said Warner did profess to know all about the affairs of the company, from representations made to him, but not from his own knowledge. Daniels appeared to me to be anxious to trade with me before I had made my own examination; he gave me the names of the directors, and offered to pay my expenses while examining, provided I was not satisfied that it was not as good as he represented; he paid a part, and only a part of my expenses, while examining into the affairs of the company.

9th cross interrogatory. Did not this negotiation result in an agreement between you and Daniels that you should proceed to Boston and examine into the affairs of the company; and that he, Daniels, should meet you at a certain time there, and hear your answer, whether you would trade or not? Did not Daniels fail to meet you at that time, and did he not convince you afterwards that other business prevented? Did you not finally have to seek Mr. Daniels, and let him know your final determination? Did you not tell Daniels at once that you would not trade for stock? Was not your negotiation entirely with reference to the note of the said company? Was that note on time or on demand?

Answer. Yes; and the note, if I recollect rightly, was on demand; but I am not positive.

10th cross interrogatory. If you state that Daniels, at any of the interviews he had with you about the farm, made any representations about the condition of the company, state whether he did not inform you that he was not thoroughly acquainted with the situation of the company, and did he not refer you to Warner for more particular knowledge? Are you sure that Daniels made any representations as of his own knowledge? Are not your recollections of the precise import of those conversations very indistinct? Did not Warner, one or two years ago, suggest to you that Daniels said as you have represented, before you could call those conversations fully to mind? State at which interview, and where, each particular representation was made.

Answer. I do not recollect that Daniels informed me that he was not thoroughly acquainted with the situation of the company; and I do not recollect that he ever referred to Warner for more particular knowledge. I supposed that Daniels made the representation to me, which I have stated, as of his own knowledge, but I am not sure that he so intended to be understood. I think I have a very distinct recollection of the pre-

cise import of the conversations that I have before detailed in regard to the company and stock. Warner never suggested to me that Daniels said as I have represented; but what I have stated, I state from my own recollection, without suggestion from any one. I have stated in my answer to the first interrogatory, at which interview, and where, each particular representation was made, as nearly as I can remember; and I refer to said answer for my answer to the latter clause of this interrogatory.

11th cross interrogatory. Who did you inquire of about the affairs of the company? Did you inquire of the very man that Warner and Daniels directed you to?

Answer. I inquired about the affairs of the company of Odiorne, and one of the directors of the company, whose name I do not remember. I was referred to these persons, by both Warner and Daniels, I believe.

12th cross interrogatory. Was you or not advised that it would not be prudent for you to put off your farm for the company's note? Did not Mr. Odiorne tell you that the prospects of the company had changed materially within a short time? Did you see the act of incorporation in Warner's hands?

Answer. Yes; but I do not remember that Mr. Odiorne told me that the prospects of the company had changed at all. I do not remember of seeing the act of incorporation in Warner's hands.

13th cross interrogatory. Was not, in a word, your several interviews with both Daniels and the company, open, frank, and manly? If you find any fault with any of them in that respect, please state who, where, and when, and in what particulars.

After you decided not to purchase the note of Daniels, did you not first see Warner? Did not Warner blow you up for not trading? Did not Warner say the note was good; and that you was unwise for not trading?

Answer. My several interviews with both Daniels and the company, were open, frank, and manly; and I have no fault to find with any of them in that respect, provided Daniels believed what he said and represented to me, and I am not able to say how far he did believe it.

To the remainder of this interrogatory I answer *yes*.

14th cross interrogatory. Was Saul B. Scott present at any time when you and Daniels were negotiating about the farm? When and where was that, and who else was present?

Answer. I do not remember that he was.

15th cross interrogatory. Do you recollect any interview between you and Daniels at Warner's house? When was that? What did Warner say about the value of the stock then? Give his representations; how did he say he knew what he told? Did he not say his representations were based on his own inquiries? What means did he tell you he took to investigate the affairs of the company?

Answer. At the first and second conversations at Warner's house, stated in my answer to the first interrogatory, Daniels being present, Warner said he believed that the stock was very valuable, and that it

would be a valuable property for any body to make an investment in; and said he knew it from information derived from members of the company, as I took it, from his own inquiries. He told me that he had been to Boston with Mr. Daniels, who had taken him to the directors of the company, and to the president, Mr. Odiorne, and that they recommended the property as highly as Mr. Daniels did.

16th cross interrogatory. Did you ever see Daniels before you was introduced to him by Warner? You never saw him and Warner together before, did you? You was not present, was you, when Daniels traded with Warner for his farm, or when he was negotiating for it? You never heard him make any representations to Warner about the Cleft Ledge Granite stock?

Answer. No; and I never heard Daniels make any representations to Warner about the Cleft Ledge Granite stock, other than I have stated in my former answers.

17th cross interrogatory. Was you or not on familiar terms with Warner, about the time he sold his farm to Daniels? Was he your next neighbor; did you see him often?

Answer. Yes.

18th cross interrogatory. Did you or not ever hear him express satisfaction with his trade with Daniels? How should you say he felt about it when you and Daniels were negotiating? Did he or not make any offer to trade his stock off with you? Did he appear at all anxious then to sell his stock?

Answer. I have heard him express satisfaction with his trade with Daniels; I should say that he felt pleased about it when Daniels and I were negotiating. I do not recollect that he ever made any offer to trade his stock off with me; he did not then appear at all anxious to sell his stock?

19th cross interrogatory. Did you ever hear him say that he inquired into the affairs of the company before he bought? Who did he say he inquired of? Did he say he satisfied himself about it?

Answer. I do not recollect that I ever heard him say that he inquired into the affairs of the company before he bought, nor that he satisfied himself about it.

20th cross interrogatory. Did you ever hear Warner charge Daniels or Fales with misrepresenting the condition of the company, or the value of the stock, before this suit was talked of?

Answer. I did, for nearly a year before I heard this suit talked of.

21st cross interrogatory. Do you know whether Warner talked and thought a good deal about the C. L. G. stock after he bought it?

Answer. Warner, for a short time after he bought it, for a month or two, talked, and apparently thought a great deal about said stock.

22d cross interrogatory. How many acres of land was there in your farm?

Answer. I believe eighty-two and a half acres.

23d cross interrogatory. Was it as good land as Warner's? What was the difference in value per acre?

Answer. I should think it was as good land as Warner's. I do not think there was much, if any, difference in value per acre.

24th cross interrogatory. How much more was Warner's farm worth than yours?

Answer. The farm that he bought of Adams was worth three thousand dollars more than mine.

25th cross interrogatory. How much would you have given Warner to boot between farms in the spring of 1837? Would you or not have given $3,000 for Warner's farm? How much would you have given?

Answer. I would not have given any boot, because I was not in a situation to have traded with him, or to have given any boot. I should have been glad to have given three thousand dollars for it, and have run in debt for the whole of it, because I could have got more money for it. I would not have given more, because I did not want it, and had no means to pay for it.

26th cross interrogatory. Did Warner, or not, ever tell you that he once sold this C. L. G. stock for land? What did he tell you about it? Did he tell you when he sold it? Give the time as near as you can recollect it.

Answer. Warner did tell me that he once sold his Cleft Ledge Granite stock for land in Tennessee, and that he was obliged to take it back again, because it was good for nothing. He did not tell me when he sold it.

27th cross interrogatory. Is Warner a sharp man for a bargain? State what his capacities that way are.

Answer. I should think he was, in property that he is acquainted with.

28th cross interrogatory. Is not Warner well off now? State what property he now owns, as you understand.

Answer. I do not know. I do not know that he owns any property, or understand that he does. I have heard nothing, and know nothing about it.

29th cross interrogatory. Did Daniels represent that the company owned any other property than the ledge at Durham, and works connected therewith, a gondalo, or gondaloes, for carrying stone? State particularly what he did state about their property. State what makes you recollect these representations.

Answer. He stated that the company owned the ledge, blacksmith's shop, tools, wharf, gondaloes, and one vessel. I recollect these representations more particularly from his high recommendation of the granite stock, and of the good standing of the company, and his urgency that I should trade with Daniels.

CALEB WHITING.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this twenty-third day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Caleb Whit-

ing to come before me, in Wrentham, in the county of Norfolk, in said district, and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, Elias Whiting, of Wrentham, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about forty-five years, on oath, depose and say, in answer to the several interrogatories, and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Have you or not ever had any conversation with either of said defendants, or heard either of them in conversation with other persons, concerning a company or corporation which they called the 'Cleft Ledge Granite Company?' If yea, with which of said defendants had you such conversation; or which held such conversation with others in your hearing; with whom was said conversation; when and where was it; who else was present? State particularly the whole conversation.

Answer. In the month of March, in the year that Capt. Warner sold his place, (I do not remember the year,) Adams Daniels came to my house with Capt. Warner, and asked me if I wished to sell my place; I replied that I would if any body wished to buy it; he asked me if I wished to sell it and take granite stock, or notes against the Granite Company in pay for it; I replied that I would not give him half of an acre of my land for all the granite stock in the town of Durham, N. H; my brother and Capt. Warner were present; he then asked my brother if he wished to sell his place; my brother said he did; Daniels asked the price of it; my brother stated three thousand dollars; Daniels said he should like to trade with him for it, if he could exchange with him granite stock, or notes against the Granite Company; this is all the conversation that I had with said Daniels, or heard at that time; a year ago last winter, Mr. Daniels met me in the centre of the town of Wrentham, in the street, and asked me how much less in value, if any, the farm which he had of Capt. Warner was worth than when he took it; some time in April last, at my house, (no one else was present,) he asked me if I had heard Capt. Warner say any thing, or what I had heard him say, about the granite stock; I told him I had heard Capt. Warner say that he was satisfied with his trade, on their recommendation; and I told him that I met Capt. Warner in Providence two years ago last fall, and that he wished me to go up to his house to dinner, that he wished to talk with me; and that Capt. Warner told me that I told him one truth; I asked what it was; and he said, that when I told

him that the granite stock in Durham, N. H., was not worth half of an acre of my land, I told the truth; that he had found out that the property was good for nothing; that they had deceived him in the property; Mr. Daniels asked me why he had not found it out before; and I replied that I did not know; I asked Mr. Daniels if the granite property was worth any thing; he said he thought, if it had have been properly managed, they might have made something out of it; and that he was very glad that he did not trade with my brother, as the property had turned out to be worthless; I do not recollect having any other conversation with said Daniels about said granite stock or Granite Company; I have never had any conversation, or heard any conversation, with Joseph J. Fales, concerning a company or corporation called the 'Cleft Ledge Granite Company.'

2d interrogatory. Have you or not ever heard either of said defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom? When and where? Who was present? What were their statements?

Answer. Nothing farther or different from what is stated in my last answer.

3d interrogatory. Have you, or not, ever heard either of the defendants make any representations concerning the property of said company or corporation? If yea, what property did they say said company owned? What was their whole statement about said company's property? When and where was it? Who was present? To whom were such representations made?

Answer. I have not, other than what is contained in my last answer save one.

4th interrogatory. Have you, or not, ever heard either of said defendants speak of, or make any statement concerning, any contracts of said company for purchasing stone? If yea, what contracts did they, or either, speak of? To what amount? With whom? State particularly all that was said by either, and to whom it was said, with the time and place, and persons present.

Answer. No.

5th interrogatory. Have you, or not, ever heard either of said defendants make any statement of their willingness to guarantee said stock to pay a handsome dividend to its stockholders, or say any thing about dividends upon said stock? If yea, state particularly and fully all either of them said, with the time and place, who was present, and to whom it was said.

Answer. I do not recollect that I ever have.

6th interrogatory. Have you, or not, ever heard either of the defendants make any statement with regard to the indebtedness of said company? If yea, state particularly and fully what they said, with the time and place, who present, and to whom said.

Answer. No.

7th interrogatory. Have you, or not, ever heard either of the defendants make any statement concerning the number of hands said

company employed in getting out rocks? If yea, state particularly and fully all was said by either, when and where, who was present, and to whom said.

Answer. No.

8th interrogatory. Have, or not, said defendants, or one of them, ever proposed to sell or exchange with you, some shares in said company's stock? If yea, state particularly and fully all the conversation between you and either of the defendants, upon the subject, and what was done by you and either of them towards such negotiation.

Answer. I cannot state farther in answer to this interrogatory, nor differently from what I have stated in my answer to the first interrogatory; and refer to said former answer for an answer to this interrogatory. Nothing was done towards a negotiation, sale, or exchange with me, of shares in said Granite Company's stock, or notes of said company, for any property of mine, more than is stated in my answer above referred to.

9th interrogatory. If either of the defendants ever made such proposition as enquired of in the last interrogatory, what use did they say they wished to make of your property?

Answer. Daniels did not say what use he wished to make of my property.

10th interrogatory. Have you, or not, ever, at the request of either of defendants, taken any measures to ascertain the value of said stock, or said company's notes? If yea, what; and did you, or not, ever report to either of the defendants the information respecting said stock, or notes, you had gained. State when and where you made enquiries, what you learned, and what you represented to the defendants, or either of them, when and where, &c., and what reply either of the defendants made to your report to them of the result of your inquiries.

Answer. I have not.

11th interrogatory. Did, or not, either of said defendants, in your hearing, express any reluctance to selling the stock they had in said company, and assign any reason which induced them to do so? If yea, state particularly and fully all was said by either of them.

Answer. No.

12th interrogatory. If you ever enquired of either of the defendants why they wished to sell so valuable stock? What reason did they assign?

Answer. I never asked them, or either of them, why they wished to sell so valuable stock; and neither of them ever assigned any reason.

13th interrogatory. Did you, or not, ever hear either of defendants say anything about the individual liability of the stockholders of said company to pay the company notes? If yea, state fully all they said.

Answer. I never did.

14th interrogatory. If you ever had any conversation with either of the defendants about their prospect of selling any more of said stock than they then had sold, what was the whole said by you or them? State fully when, where, &c.

Answer. I never heard either of them say any thing about it.

15th interrogatory. Have you or not ever seen either of the defendants exhibit any papers purporting to be representations concerning said company or its property? If yea, what papers were exhibited by them? To whom were they exhibited? When and where was it? What was said by either of them about the papers?

Answer. Never.

16th interrogatory. If you ever heard either of the defendants say any thing about said company owning a brig or other vessel; or about employing any person to sail said brig, and look after their navigation? State particularly and fully all either of the defendants said upon the subject, with the time, place, &c., and to whom said.

Answer. I never [heard] either of them say any thing about the matters enquired about in this interrogatory.

17th interrogatory. If you ever heard either of the defendants compare the value of said company's stock with other stocks? State fully all either said upon the subject; give time, place, &c.

Answer. I never heard either of them compare the value of said company's stock with any other stocks.

18th interrogatory. If you ever heard either of the defendants say any thing about said company's having large contracts for furnishing stone, with whom did they say said contracts were? To what amount? For what use did they say said contractors would said stones?

Answer. I never heard either of them say anything about it.

19th interrogatory. Are you, or not, acquainted with a farm situated in Franklin and Wrentham, on which the plaintiff formerly lived; which was by him deeded to the said Daniels in the year 1836? If yea, what was the value of the farm and out-lands belonging to the same at that time? Have you, or not, ever heard either of the defendants state the value of the same? Have you, or not, ever heard either of the defendants state what said farm and lands cost them, or either of them, or said farm stood them at, by the way or manner they got it? State fully all the conversation upon the subjects as particularly and fully as if specially interrogated upon each and every part of your and their conversation with either of the defendants; the time and place, &c.

Answer. I should think four thousand dollars would be very low for said farm and out-lands at that time. I heard Mr. Daniels, at his place of residence in Franklin, in 1838 or 1839, say that he thought the farm was worth four thousand dollars. I told him I was authorized to make him an offer for the farm. He asked me who wanted to buy the farm. I told him my brother wished me to come and see him, and make *me* an offer for it. I made him an offer of three thousand dollars. He said he was not a judge of real estate; he would get on some men, and see what was the value of wood land, and let me know, if I would come over on a certain day, the lowest he would take for it. At the time appointed I went over to his house. He told me that he had got Lewis Fisher and another man, whom I do not remember, to go and look at the farm, and that they had valued it higher than he did; but

as he wanted to sell the property very much, he would take thirty-five hundred dollars for it. I told him I was authorized to give him thirty-two hundred dollars for it. He said he should not sell it for that sum at present. I never heard either of defendants say what said farm and out lands, or either of them, cost them or either of them, or what said farm stood them at, by the way or manner they got it, or otherwise.

Cross interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st cross interrogatory. What is your age and occupation; where do you reside, and how long have you resided there?

Answer. My age is forty-four years last September; I am a farmer; I reside in Wrentham, and have resided there all my life; I was born there.

2d cross interrogatory. Are you or not acquainted with Samuel Warner and Adams Daniels; how long have you known them, and where?

Answer. I am acquainted with both said Warner and Daniels. I have known Captain Warner for twelve or fifteen years, in Wrentham and in Providence. I first became acquainted with him when he moved to Wrentham from Providence. I have been acquainted with said Daniels ever since he traded with Captain Warner for his farm, about eight or ten years ago; part of the time he has resided in Franklin, and part of the time in Medway.

3d cross interrogatory. Are you acquainted with the farm sold by Captain Warner to said Daniels; what was its value the last of Nov., 1836, in cash—what would it have brought at auction?

Answer. I am acquainted with said farm. I think it was worth, in cash, the last of November, 1836, four thousand dollars; I think it would have brought at auction from thirty-three hundred to thirty-five hundred dollars.

4th cross interrogatory. Did you or not have an interview with said Warner, in the fall of 1836, immediately after he sold his farm to Adams Daniels; where did that interview, if any, take place?

Answer. I had an interview with said Warner in the fall of 1836, in the bar-room of the tavern in the centre of the town of Wrentham, immediately after he sold his farm to Adams Daniels; and also another interview on the next morning thereafter at my house.

5th cross interrogatory. Did or not said Warner, at that interview, say any thing about having sold his farm to Adams Daniels; if yea, what did he say he got for it; how did he say Daniels paid for it? Did he say any thing about the value of the granite stock which he took in pay for it? If yea, state what means he said he had used to ascertain its value—state, as well as you can, the conversations that took place between you and Warner, to that point, at that time.

Answer. At the first interview mentioned in my last answer, he said [he] had sold his farm to Adams Daniels for six thousand dollars, and that Daniels paid him in granite stock in the town of Durham, N. H., which was better than money. He said he had not seen it, but had

been and inquired about it of persons that Mr. Daniels and Mr. Fales had recommended him to for inquiry about its value. I asked him who those persons were. He told me their names—Mr. Odiorne and Henry Fiske, and some other names that I do not remember. I told him that I would not give him half an acre of my land for all his shares. He seemed much put out with me because I made such remarks in the hearing of so many people, and would not ride home with me. He asked me if I knew any thing about the stock. I told him that I had never heard that there was such a rock in Durham, N. H. I do not recollect any other conversations with said Warner, to that point, at that time.

6th cross interrogatory. Did or not said Warner call upon you the next morning after the abovementioned interview; if yea, what was said by him, at this interview, about said stock; what did he say about its value, and the means he had used to ascertain it?

Answer. The next morning he asked me why I should make the remarks that I did the night before, in the hearing of so many people, when I did not know any thing about the stock. I told him I thought there was rock enough in Massachusetts as valuable as that, which he might have sold his farm for. He then stated that the rock was of great value, as it was recommended to him; and that Mr. Daniels, Mr. Fales, Mr. Fiske, and Mr. Odiorne, had recommended it to him as being worth more than money at twelve per cent. He asked me if I should not be willing to sell my farm, and take granite stock in pay. I told him if I sold my farm, I should have the money for it, or I should not sell it. I do not recollect any thing else being said at that interview.

7th cross interrogatory. Did not said Warner tell you that, before he traded for said stock, he went to Boston and investigated the affairs and standing of said company? State what he did tell you to that point.

Answer. He did tell me that he went to Boston, and inquired of people recommended by Mr. Daniels the value of the property in the granite ledge in the town of Durham, N. H., before he traded for said stock; and that they recommended the property to be good—the same persons that I have mentioned in a former answer. I do not remember that he spoke of making any other investigation of the affairs or standing of said company.

8th cross interrogatory. Did you or not know any thing about said Cleft Ledge Granite stock before Mr. Warner bought into it? Did you or not ever hear that there was such a ledge and company, until Mr. Warner told you at the abovementioned interview? Were or not your ideas of its value founded entirely [upon] your general estimate of the value of such stocks?

Answer. I knew nothing about said Cleft Ledge Granite stock, nor ever heard that there was such a ledge or company until after Mr. Warner bought into it, nor until he told me at the abovementioned interview with him. My ideas of its value were founded partly upon my general estimate of the value of such stocks, and partly because it

was so far from market, and that there was an abundance of granite rock nearer that could be worked to better advantage.

9th cross interrogatory. Did or not said Warner advise you and your brother to put off your farms for said stock? If yea, how long was it after he bought when he gave you this advice? What did he found his advice upon? What facts did he say he knew about the stock?

Answer. He did, about a fortnight after he bought, upon the recommendation of the property to him; and he said he knew nothing about the stock except what the gentlemen named in a former answer had told him.

10th cross interrogatory. Has or not said Warner ever told you that he had put off the said Cleft Ledge Granite stock for Tennessee land? If, yea, state what he said about said trade for said lands soon after it was made. Please confine your testimony to a period within a year or two of the time he purchased.

Answer. Said Warner told me, very soon after he purchased, that he had put off said Cleft Ledge Granite stock for Tennessee lands, and that he had been obliged to take the granite stock back, because it had been ascertained that it was good for nothing.

11th cross interrogatory. How many acres of land did he say there were? How much did he give for it? What did he say about the quality, location, and value of the land? State fully and particularly what he represented the said land to be in these particulars. Please confine your testimony to the period above named.

Answer. He told me the number of acres, but I do not recollect the number. He did not tell me how much he gave for it. He told me it was forest land, not cultivated. I do not recollect that he stated any thing about its location, or value, or quality.

12th cross interrogatory. Has or not said Warner ever told you the terms on which Mr. Bishop, his solicitor in this suit, was carrying it on? If yea, state what Mr. Warner said about it; how much he said Mr. Bishop was to receive (if any thing) of the sum recovered; who was to have the cost, &c.

Answer. No.

13th cross interrogatory. What are said Warner's capacities for business? Is he or not shrewd and sharp for a bargain; or, how otherwise?

Answer. He is a shrewd and sharp man for a bargain.

14th cross interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, on the matters in question in this cause? If yea, set forth the same fully, at large, in your answer.

Answer. I do not know that I can, or that I have any other knowledge, or know any other matter or thing which may be a benefit or advantage to either of the parties in this cause, or that may be material to the subject of this examination, or the matters in question in this cause.

ELIAS WHITING.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this twenty-third day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Elias Whiting to come before me in Wrentham, in said district; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers, to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner*.

I, James B. Wilson, of Medway, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about fifty years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Have you or not ever had any conversation with either of said defendants, or heard either of them in conversation with other persons, concerning a company or corporation which they called the 'Cleft Ledge Granite Company?' If yea, with which of said defendants had you such conversation, or which held such conversation with others in your hearing? With whom was said conversation? When, and where was it? Who else was present? State particularly the whole conversation.

Answer. I have had conversation with Adams Daniels concerning the Cleft Ledge Granite Company; I never had any conversation with Fales, that I know; I do not know him. In February or March, 1837, I met Adams Daniels at the Lamb Tavern, in Boston; Adams Daniels asks me if I had a large quantity of manufactured goods on hand that would have to lie over; on my replying that I had, he asks me if I did not wish to exchange for stocks; and, upon my inquiring what stocks, he answered Cleft Ledge Granite stock; I made inquiries about the stock; he stated that it was a granite rock about equal to the Quincy rock, and easier to get, because it was nearer to water conveyance; that the company had bought the ledge; and that there was a large quantity of it; that it split well; that they had built a house, or had a house, and built a blacksmith's shop; that they had proper carriages to convey the rock to the water; and that they were then taken in vessels and carried to Boston; that there was a ready and good sale for them, at a profit as good as any stock, in the said city of Boston; there was more said between us; I made many inquiries about the stock, and he talked very freely about it; the above is the substance of what was said; much more was said, but I am not able to recall all that was said; this conversation was in the bar-room, others were in and out; but I do not suppose that

any person overheard the conversation; no one interrupted our conversation; I asked him why he wished to dispose of the stock if it was so good; why he did not keep it himself? He said he would not put it off if he could not get more of it; but he could get more of it; I told him that I had land in New Hampshire, and when I could dispose of that, I might purchase his; I do not, at this moment, recollect any thing more that was said.

2d interrogatory Have you or not ever heard either of said defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom; when, and where; who was present; what were their statements?

Answer. I never had any conversation with either of said defendants to my knowledge, except with Daniels, at the time and place above mentioned, or heard any conversation between them and any other, unless I might have had conversation with Fales, without knowing who it was. I once conversed with a stranger upon the subject, and, for aught that I know, it might have been Fales; I supposed that it was, but I do not know. Said Daniels, at the conversation aforesaid, told me that he would sell me one or two thousand dollars worth of it, and that it would be as valuable as other stocks in Boston, and pay as good dividend.

3d interrogatory. Have you or not ever heard either of the defendants make any representations concerning the property of said company or corporation? If yea, what property did they say said company owned; what was their whole statement about said company's property; when, and where was it; who was present; to whom was such representation made?

Answer. I refer for an answer to this interrogatory to my answer to the first interrogatory above; and I state further, that Daniels, at the time and place mentioned in my said former answer, represented to me that the company owned the vessels that were to carry the stones to Boston.

4th interrogatory. Have you or not ever heard either of said defendants speak of, or make any statements concerning, any contracts of said company for furnishing stone? If yea, what contracts d d they or either of them speak of; to what amount; with whom? State particularly all that was said by either, and to whom it was said, with the time and place, and persons present.

Answer. At the time and place aforesaid, Daniels did say something about having made, or their being about to make, a contract with Government, but I cannot state what was said about it—I do not recollect.

5th interrogatory. Have you or not ever heard either of said defendants make any statement of their willingness to guarantee said stock to pay a handsome dividend to its stockholders, or say any thing about dividends upon said stock? If yea, state particularly and fully all either of them said, with the time and place, who was present, and to whom it was said.

Answer. I do not recollect any thing more that was said upon the

matter inquired of in this interrogatory, than I have stated before in my first answer.

6th interrogatory. Have you or not ever heard either of the defendants make any statement with regard to the indebtedness of said company? If yea, state particularly and fully what they said, with the time and place, who present, and to whom said.

Answer. Not that I remember.

7th interrogatory. Have you or not ever heard either of the defendants make any statement concerning the number of hands said company employed in getting out rock? If yea, state particularly and fully all that was said by either, when, and where, and who was present, and to whom said.

Answer. I think Daniels did say, at the time and place aforesaid, something concerning the number of hands employed in getting out rock, but I do not recollect what it was.

8th interrogatory. Have or not said defendants, or one of them, ever proposed to sell or exchange with you some shares in said company's stock, or some of said company's notes for property of yours? If yea, state particularly and fully all the conversation between you and either of the defendants upon the subject; what was done by you and either of them toward such negotiation.

Answer. I have stated all that I recollect upon this matter in my answer to the first interrogatory.

9th interrogatory. If either of the defendants ever made such proposition, as inquired of in the last interrogatory, what use did they say they wished to make of your property?

Answer. Daniels did not say what use he wished to make of my property if he should trade with me.

10th interrogatory. Have you or not ever, at the request of either of the defendants, taken any measures to ascertain the value of said stock, or said company's notes? If yea, what? And did you or not ever report to either of the defendants the information respecting said stock or notes you had gained? State when and where you made inquiries; what you learned, and what you reported to the defendants, or either of them; when, and where, &c., and what reply either of the defendants made to your report to them of the result of your inquiries.

Answer. I have not.

11th interrogatory. Did or not either of said defendants, in your hearing, express any reluctance to selling the stock they had in said company, and assign any reason which induced them to do so? If yea, state particularly and fully all that was said by either of them.

Answer. No. Daniels wished to sell it. He did say, however, that he would not sell it, at any rate, if he could not get more of it.

12th interrogatory. If you ever enquired of either of the defendants why they wished to sell so valuable stock, what reason did they assign?

Answer. I do not remember.

13th interrogatory. Did you or not ever hear either of defendants

say any thing about the individual liability of the stockholders in said company to pay the company notes? If yea, state fully all they said.

Answer. I did not know that the company had any notes, or owed any; nothing was said about it, and nothing was said about the individual liability of the stockholders.

14th interrogatory. If you ever had any conversation with either of the defendants about their prospect of selling any more of said stock than they then had sold, what was the whole said by you or them? State fully, when, where, &c.

Answer. Nothing was said about it.

15th interrogatory. Have you or not ever seen either of the defendants exhibit any papers purporting to be representations concerning said company, or its property? If yea, what papers were exhibited by them? To whom were they exhibited? When and where was it? What was said by either of them about the papers?

Answer. No.

16th interrogatory. If you ever heard either of the defendants say any thing about said company owning a brig or other vessel, or about employing any person to sail said brig and look after their navigation, state particularly and fully all either of the defendants said upon the subject, with the time, place, &c., and to whom said.

Answer. I have stated before, in my former answer, all that I recollect that was said upon the subjects inquired of in this interrogatory.

17th interrogatory. If you ever heard either of the defendants compare the value of said company's stock with any other stock, state fully all either said upon the subject; give time, place, &c.

Answer. I do not remember any thing more upon the subject of this inquiry than I have stated in my answers above, and refer to such previous answers for my answer to this interrogatory.

18th interrogatory. If you ever heard either of the defendants say any thing about said company having large contracts for furnishing stone, with whom did they say said contracts were? To what amount? For what use did they say said contractors wanted said stones? Give time, place, &c., and to whom said.

Answer. I do not recollect what said Daniels said upon this subject; something was said about it.

19th interrogatory. Are you or not acquainted with a farm situated in Franklin and Wrentham, on which the plaintiff formerly lived, which was by him deeded to the said Daniels in the year 1836? If yea, what was the value of the farm and out-lands belonging to the same at that time? Have you or not ever heard either of the defendants state the value of the same? Or have you or not ever heard either of defendants state what said farm and out-lands cost them, or either of them? Or what said farm stood them at, by the way or manner they got it? State fully all the conversation upon the subjects as particularly and fully as if specially interrogated upon each and every part of your and their conversation with either of the defendants, giving the time and place, &c.

Answer. I am not acquainted with said farm; I have heard Daniels

say something about the value of said farm; Daniels told me, at his own house, about a year ago, no other person being present, that the farm was not worth as much, and that they did not get as much as they called it, when they traded for it. I do not recollect what he said farther, although I remember that he did state to me. at that time, what he gave for it, and what he sold it for. I am not able to state more of the conversation between us.

Cross interrogatories propounded by F. W. Sawyer, esq., solicitor for Adams Daniels and Joseph J. Fales, they first objecting to all of the plaintiff's interrogatories, except the 19th, as irrelevant and incompetent; said defendants propounding these cross interrogatories de bene esse.

1st cross interrogatory. If you have testified that said Daniels ever made any representations about the Cleft Ledge Granite Company, state when that was, where it was, who was present, how much impression it made on your mind. Was there any thing about it that led you, at that time, to treasure it up in your memory?

Answer. It was at the Lamb Tavern in Boston, in February or March, in 1837, I should think; possibly it might have been the fore part of April; it was in the bar-room; people were coming in and going out; it was in the evening, and people were sitting about in the room, talking, &c.; I do not think that any person overheard, or paid any attention to our conversation; it made a strong impression upon my mind. Having myself previously become a purchaser of a piece of land in New Hampshire, for which I paid four or five hundred dollars, which proved to be of no value, led me to make particular inquiries about this; and because I supposed, from the nature of the case, it was not worth any thing, this conversation is strongly impressed on my memory.

2d cross interrogatory. Did it make such an impression that you can now swear distinctly as to the exact import of his representations?

Answer. Yes.

3d cross interrogatory. Was Samuel Warner present at that interview?

Answer. He was not.

4th cross interrogatory. If you have intimated in any way, in your examination in chief, that Daniels said the company had a vessel or vessels, do you mean to swear that you have now a distinct recollection that he then said so? Might you not have got such an impression from some reference of his to the transportation of the granite?

Answer. I do; I do not think that I got such an impression from any reference of his to the transportation of the granite.

5th cross interrogatory. Do you know that said Daniels stated any thing about said stock that was not true?

Answer. No.

JAMES B. WILSON.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this twenty-fourth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused James B. Wilson to come before me, in Cumberland, in the State of Rhode Island, at a village called Woonsocket Falls, and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE,
Commissioner.

I, Walter H. Fisher, of Franklin, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about thirty-six years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Have you or not ever had any conversation with either of said defendants, or heard either of them in conversation with other persons, concerning a company or corporation, which they called the 'Cleft Ledge Granite Company? If yea, with which of said defendants had you such conversation; or which held such conversation with others in your hearing; with whom was said conversation; when and where was it; who was present? State particularly the whole conversation.

Answer. I have not.

2nd interrogatory. Have you or not ever heard either of said defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom; when and where; who was present; what were their statements?

Answer. I have not.

3d interrogatory. Have you or not ever heard either of the defendants make any representations concerning the property of said company or corporation? If yea, what property did they say said company owned; what was their whole statement about said company's property; when and where was it; who was present; to whom was such representation made?

Answer. I have not.

4th interrogatory. Have you or not ever heard either of said defendants speak of or make any statement concerning any contracts of said company for purchasing stone? If yea, what contracts did they or either speak of; to what amount; with whom? State particularly all that

was said by either, and to whom it was said, with the time and place, and persons present.

Answer. I never have.

5th interrogatory. Have you or not ever heard either of said defendants make any statement of their willingness to guarantee said stock to pay a handsome dividend to its stockholders, or say any thing about dividends upon said stock? If yea, state particularly and fully all either of them said, with the time and place, who was present, and to whom it was said?

Answer. I never have.

6th interrogatory. Have you or not ever heard either of the defendants make any statement with regard to the indebtedness of said company? If yea, state particularly and fully what they said, with the time and place, who present, and to whom said.

Answer. I never have.

7th interrogatory. Have you or not ever heard either of the defendants make any statement concerning the number of hands said company employed in getting out rock? If yea, state particularly and fully all was said by either, when and where, and who was present, and to whom said.

Answer. I never have.

8th interrogatory. Have or not said defendants, or one of them, ever proposed to sell or exchange with you some shares in said company's stock, or some of said company's notes, for property of yours? If yea, state particularly and fully all the conversation between you and either of the defendants upon the subject; and what was done by you and either of them towards such negotiation.

Answer. No.

9th interrogatory. If either of the defendants ever made such proposition as enquired of in the last interrogatory, what use did they say they wished to make of your property?

Answer. Neither of said defendants ever made any such proposition.

10th interrogatory. Have you or not ever, at the request of either of defendants, taken any measures to ascertain the value of said stock or said company's notes? If yea, what; and did you or not ever report to either of the defendants the information respecting said stock or notes you had gained; state when and where you made inquiries, what you learned, and what you reported to the defendants, or either of them; when and where, &c., and what reply either of the defendants made to your report to them of the result of your enquiries.

Answer. No.

11th interrogatory. Did or not either of said defendants, in your hearing, express any reluctance to selling the stock they had in said company, and assign any reason which induced them to do so? If yea, state particularly and fully all was said by either of them.

Answer. Never.

12th interrogatory. If you ever inquired of either of the defendants

why they wished to sell so valuable stock, what reason did they assign?

Answer. I never made any such enquiry.

13th interrogatory. Did you or not ever hear either of defendants say any thing about the individual liability of the stockholders of said company to pay the company notes? If yea, state fully all they said.

Answer. Never.

14th interrogatory. If you ever had any conversation with either of the defendants about their prospect of selling any more of said stock than they then had sold, what was the whole said by you or them? State fully where, when, &c.

Answer. I never had any conversation with either of them about any such matter.

15th interrogatory. Have you or not ever seen either of the defendants exhibit any papers purporting to be representations concerning said company or its property? If yea, what papers were exhibited by them; to whom were they exhibited; when and where was it; what was said by either of them about the papers?

Answer. No.

16th interrogatory. If you ever heard either of the defendants say any thing about said company owning a brig or other vessel, or about employing any person to sail said brig and look after their navigation; state particularly and fully all either of the defendants said upon the subject, with the time, place, &c., and to whom said.

Answer. I never heard either of them say any thing about any such matters.

17th interrogatory. If you ever heard either of the defendants compare the value of said company's stock with any other stocks, state fully all either said upon the subject; give time, place, &c.

Answer. I never heard either of them say any thing in relation to it.

18th interrogatory. If you ever heard either of the defendants say any thing about said company having large contracts for furnishing stone, with whom did they say said contracts were? To what amount? For what use did they say said contractors would [put] said stones? Give time, place, &c., and to whom said.

Answer. I never heard either of them say any thing in relation or about any such matter.

19th interrogatory. Are you or not acquainted with a farm situated in Franklin and Wrentham, on which the plaintiff formerly lived, which was by him deeded to the said Daniels in the year 1836? If yea, what was the value of the farm and out-lands belonging to the same at that time? Have you or not ever heard either of the defendants state the value of the same? Or have you or not ever heard either of defendants state what said farm and lands cost them, or either of them, or what said farm stood them at, by the way or manner they got it? State fully all the conversation upon the subjects, as particularly and fully as if specially interrogated upon each and every part of your and their conversation with either of the defendants; give the time and place, &c.

Answer. I know where said farm lies, but am but little acquainted with it; I should not suppose it was worth at that time more than three thousand dollars, with the out-lands; I have never heard either Adams, Daniels, or Joseph J. Fales state the value of the same; I have never heard either of them state what said farm and out-lands cost them, or either of them, or what said farm stood them at, by the way or manner they got it, or otherwise.

WALTER H. FISHER.

UNITED STATES OF AMERICA, *Massachusetts district, ss:*

On this twenty-third day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Walter H. Fisher to come before me, in Wrentham, in the county of Norfolk, in said district, and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories, and cross interrogatories, that should be put to him, gave the foregoing answers to the foregoing interrogatories by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, Levi Bates, of Weymouth, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about fifty-seven years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by J. P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. What is your age and occupation; and what has been your occupation for several years last past; what was it in 1836? Have you or not had much, and how much, experience in working granite quarries, and in quarrying stone? Are you or not acquainted with the qualities of stone, and its fitness for buildings and structures?

This question is objected to.

Answer. My age is fifty-seven years, and my occupation is a stone contractor, and I have been engaged for the last four or five years in superintending the Government works and other works on Fort Independence, Deer island, and Rainsford island. For two years I was engaged in blasting, excavating, &c., on the Amoskeag canal, in Manchester, N. H. In 1836, part of the season, I was engaged in superintending the quarrying of stone for the United States, at Annisquam, at Gloucester. I have had considerable experience in working quarries of granite, and in quarrying stone. And I have been employed by companies to examine quarries. I think I am acquainted with the qualities of stone, and its fitness for buildings and structures. I am perhaps as much experienced, and have contracted as much for erecting stone walls, buildings, &c., as any one of my age.

2d interrogatory. Was you or not in the year 1836, or when else,

employed by a certain company called the Cleft Ledge Granite Company? If yea, by whose and what persuasions and inducements were you led into that engagement; at what time, or about what time, did you commence, and when did you leave their said employment; what caused you to leave the same; was you, during that intervening period, or a part of it, and what part, employed at Durham, in New Hampshire, in the quarry of said company?

This question objected to.

Answer. I was employed by the Cleft Ledge Granite Company in 1836; I was engaged by Joseph J. Fales, and was induced to engage by the pay he offered me, twelve hundred dollars per annum, and all my expenses extra for travel in transacting business for the company; I commenced in their employment about or on the first day of September, 1836, and left on the last of November, 1836; I found it impossible to work the quarry to advantage, and I was not permitted by Doctor Fales to state my opinions respecting the quarry to the president and directors; these were the principal reasons that I left their employment; I was at Durham, in New Hampshire, from on or about the first of September, 1836, to on or about the first of November following, when I went to New York for the company, and while at Durham I had the superintending of the quarry and the stone there.

3d interrogatory. What was the kind, character, and quality of the stone composing the quarry of said company at Durham; how, if at all, did it differ from the other ledges in that neighborhood; was it fit and suitable for the purposes for which it was offered to the public; was it fit for public buildings, or for any buildings ordinarily constructed of stone, or any buildings or works requiring stone of any considerable size; of what dimensions were the stones quarried then, and of what shape; could they be quarried of a large size at all, and of a different shape, without difficulty; could said quarry be worked at a profit; could it be worked without a loss; was it worth any thing for the purpose of working it as a quarry, and if any thing, how much; was the quarry worth as much as the land itself would be, if the quarry or ledge of rocks were out of the way?

This question is objected to.

Answer. The stone was a hard flinty stone, very expensive to hammer; all the stone in that neighborhood is of similar quality; the stone lay in strata from four inches to a foot thick, and when got out, vary in their thickness, taking the two ledges, from two to four inches; it was not fit and suitable for the purposes for which it was offered to the public; it is not fit and suitable for buildings that require stones of any size; the stones could not be quarried of any particular dimensions; and they came out from the quarry of all kind of shapes; and they could not be quarried of a large size, or of any different shape from what they lay in the quarry; the quarry could not be worked at a profit, nor without a loss; it was worth nothing for the purpose of working it as a quarry; I should not think the quarry was worth any thing near as much as the rest of the land that the company owned there.

4th interrogatory. Did you or not, shortly after your going to Durham, inform J. J. Fales, and said company, that the quarry would amount to nothing, and that the stone was not fit for quarrying, and that it would not pay for quarrying; and did or did not said Fales request, and urge you not to make public said fact, and not to communicate it to any person, but to keep it from the public, and to make all your communications directly to him?

This question objected to by F. W. Sawyer, esquire.

Answer. I did, shortly after going to Durham, inform J. J. Fales that it was impossible to get out any large stones suitable for building purposes; and he did request and urge me not to make public said fact, and not to communicate it to any person, but to keep it from the public, and to make all my communications directly to him.

5th interrogatory. Did or did not said Fales write you a letter, or letters, therein requesting you not to make known to the public your opinions with regard to said quarry, and the kind and qualities of stone that could be obtained from it? If yea, annex said letters to this deposition.

This question objected to by F. W. Sawyer, esquire.

Answer. He did; there were a number of letters; I have but one now in my possession, which I annex hereto, and it is marked (A.) The other letters are in the hands of Rufus Choate, esquire, of Boston.

6th interrogatory. At the time you went to Durham, were or not said company under a contract to furnish stone for the U. S. Government, for some buildings at the navy yard at Portsmouth? If yea, please state whether said contract was ever fulfilled, and if not, why not; whether stone could be obtained from said quarry at all suitable for the purpose, or according to the terms of the contract; whether you did or not so advise said company or said Fales, immediately, or soon after your first going to the quarry; whether you was or not directed by said company to effect the relinquishment of said contract; whether said company did not procure another person, and if so, whom, to take said contract off their hands and fulfil it for them; and whether or no they did not agree to pay that person $500 for so taking said contract off their hands; and whether or not they did not cheat him out of said $500 at last?

This question is objected by F. W. Sawyer, esquire.

Answer. The company was under a contract to furnish stone for the U. S. Government, for some building at the navy yard at Portsmouth; said contract was never fulfilled by the company, because suitable stone could not be got out of the quarry to perform the contract; about the first of October, 1836, immediately after my becoming acquainted with the terms of that contract, I informed said Fales, that stones could not be got out of that quarry according to the terms of said contract; the company directed me to get rid of the contract on the best terms I could, and I, some time in October, procured another person to take said contract off their hands, and fulfil it for them; the company agreeing to pay that person five hundred dollars for taking the said

contract off their hands; but they have never paid the person so employed said sum, nor any part of it.

7th interrogatory. Were there or not, during your said engagement, any facts and circumstances which came to your knowledge, and if so, what were they, which led to the conviction in your mind that said company or concern was carried on by said Fales and others for purposes of swindling, that it was got up and carried on to cheat and defraud the public?

This question is objected to by F. W. Sawyer, esquire.

Answer. I understood that Mr. Pendexter sold the ledge and farm to the company, for forty-five hundred dollars, from said Pendexter; and that the consideration expressed in the deed was fifty thousand dollars; and on examination of the records, I found that last named sum to be the consideration; and this fact, taken in connection with the instruction of Fales to keep every thing private about it, led me to believe that there was something that was unfair in the management of the concern, and that there was fraud somewhere, or intended fraud.

8th interrogatory. Did you ever negotiate, or undertake to negotiate, for any contract with Government for and on behalf of said company, furnishing stone at Newport, R. I?

This question objected to by F. W. Sawyer, esquire.

Answer. I did not.

9th interrogatory. Had you or not, before going into the employ of said company, had contracts with Government for supplying stone at Newport; and was or not this known to said Fales?

This question objected to by F. W. Sawyer, esquire.

Answer. Yes.

10th interrogatory. Did you or not go to New York for said Co., and when; were you or not instructed to sell the stone of the company then, and to make further contracts, or talk about it; did you sell said stone, and for how much; did you make other contracts for stone, or talk about it; and if not, why not?

This question objected to by F. W. Sawyer, esquire.

Answer. I went to New York for said company about the first of November, 1836; I was instructed by Fales and the company to sell the stone of the Co. there, and to make contracts to sell; I did sell some stone that had been sent on there, before I had any thing to do with it, for one hundred and twenty-five dollars; I did not make any farther contracts, or try to, nor talk about it, because I knew that the company could not fulfil them from their quarry.

11th interrogatory. Why did you leave the employment of said company?

This question is objected to by F. W. Sawyer, esquire.

Answer. Because I could not work the quarry to any advantage, and because I was required by Fales to keep every thing private, and because I could not get money to pay the hands.

12th interrogatory. State any other facts, if you know any, that may be serviceable to the plaintiff in this case.

Answer. I do not know any thing more than I have stated that I suppose wound be serviceable to the plaintiff in this cause.

Cross interrogatories propounded by F. W. Sawyer, esquire, in behalf of, and as solicitor for, Adams Daniels and Joseph J. Fales, de bene esse, they having objected to the whole of the direct interrogatories.

1st cross interrogatory. How long did you act as agent for the Cleft Ledge Granite Company?

Answer. I think about three months.

2d cross interrogatory. What salary did you have, and was it duly paid?

Answer. My salary was to be twelve hundred dollars per annum, and I have been paid at that rate for the time I was in their employ, part in money, and part in orders on stores in the city of Boston.

3d cross interrogatory. Was not the salary a liberal one, and was not that a sufficient inducement, without any other, to hold out to you to obtain your services?

Answer. I considered the salary a fair salary when I went there, and it would have been a sufficient inducement, without any other, provided every thing relating to the quarry was such as was represented to me; but it would not have been a sufficient inducement, taking things as I found them at the quarry, and taking into view all other considerations.

4th cross interrogatory. Did you not visit the quarry before you agreed to act as agent?

Answer. I did not.

5th cross interrogatory. Does not Doctor Jackson's report present a fair and true statement of the extent and quality of the granite, and facilities for working the same, as it appeared to you, when you commenced operations at Durham?

Answer. It does not, or rather, it did not.

6th cross interrogatory. Could not the quarry have been worked to advantage if the price of granite had continued at the price it was bringing when you commenced your agency; I mean, of course, after you had perfected your plans for operations to advantage?

Answer. It could not in my opinion.

7th cross interrogatory. During your engagement with the company, had you not more or less hands employed under you; did not the members of the company manifest a becoming interest in forwarding the operations of the company, and render its operations permanently profitable?

Answer. I had more or less hands employed under me. The members of the company did not manifest a becoming interest in forwarding the operations of the company, and render its operations permanently profitable, by not furnishing funds for the purpose.

8th cross interrogatory. Was there not a revulsion in trade in the spring of 1837, which very materially affected granite operations, and

all other business; was not its effect to carry granite down from 7 to $3 per ton, or something near that?

Answer. To the first branch of this interrogatory I answer in the affirmative, to the latter part in the negative, so far as my knowledge extends.

9th cross interrogatory. Was not Geo. C. Thompson the clerk of the company while you was there? Did he not live there?

Answer. Yes, part of the time.

10th cross interrogatory. Did not the company expend a considerable of money there during the time you was there, and before?

Answer. I do not know what before, but they did not expend much while I was there, except the expense of quarrying.

11th cross interrogatory. Is it not a great point gained when a granite quarry has been opened and tested, and roads built, and other conveniences secured to quarry the granite, and send it to market?

Answer. It is.

12th cross interrogatory. Had not all of this been effected before November the 19th, 1836?

Answer. The quarry was opened, and roads built, and a wharf was built, and the quarry had been tested.

13th cross interrogatory. How were granite quarries held during the years of 1835, and the early part of 1836; were they not much sought after, and commanding high prices?

Answer. They were.

14th cross interrogatory. Did not the disasters of 1837 carry down almost all of the granite companies, except the Quincy and the Hallowell company; were not the prices of labor at Durham favorable to the profitable working of the quarry?

Answer. To the first branch of this interrogatory I answer, 'not to my knowledge;' to the latter clause I answer, that the prices of labor at Durham were not favorable to the profitable working of this quarry, because it could not be worked at all to any profit.

15th cross interrogatory. Did you ever know Adams Daniels to have aught to do or say about the company or its operations?

Answer. I did not, I don't know the man.

LEVI BATES.

Letter referred to in annexed deposition.

JOHN J. CLARKE, *Commissioner.*

(A.)

BOSTON, *Oct.* 5, 1836.

Col. LEVI BATES:

Dear Sir: I received your letter too late last evening to meet the directors and act at once upon the information I received from you. I read your communication last night with no small degree of surprise. I regret very much that the stone cannot be got out to complete this contract. You had better direct your attention to getting out such ran-

dom ashler as you can to-morrow, and at night, Thursday night, you will hear from us directing you what to do, which will be either to come to Boston and meet the board, or to act with Mr. Thompson, and give up the contract, by a vote of the board, that will be forwarded to you. In the mean time it is of the utmost importance that you say nothing against the quarry until you have seen me. We shall send up two hundred and fifty dollars this week, and part of it to-morrow, with our communication to you. I hope you will stop the stage to-morrow, and not let our communication go on to Dover. You say, had the stone for the Portsmouth contract been only one foot rise, as you supposed it to be, or one foot ashler, you would have completed the contract. If that is the case, you can as well get out ashler for other works, which stone are in great demand in Boston and elsewhere. You recollect you are engaged to us for one year. Should we write for you to come direct to Boston, instead of giving up the contract first, you will have to come to Boston after, in order to consult what it is best to do.

I must request you again to keep your views of the quarry to yourself until you have seen me.

Yours, truly,
J. J. FALES.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this thirtieth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Levi Bates to come before me, in Roxbury, in the county of Norfolk, in said district, and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence, and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE,
Commissioner.

I, Henry Gilbert, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, of the age of about thirty years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories proposed by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. Whether or not did you board at the Lamb Tavern, in Boston, in the month of November, 1836, or about that time?

Answer. I did.

2nd interrogatory. Whether or not you are acquainted with Adams Daniels and Samuel Warner; when did you first see said Warner to know him?

Answer. I am acquainted with Adams Daniels, but I am not ac-

all other business; was not its effect to carry granite down from 7 to $3 per ton, or something near that?

Answer. To the first branch of this interrogatory I answer in the affirmative, to the latter part in the negative, so far as my knowledge extends.

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dom ashler as you can to-morrow, and at night, Thursday night, you will hear from us directing you what to do, which will be either to come to Boston and meet the board, or to act with Mr. Thompson, and give up the contract, by a vote of the board, that will be forwarded to you. In the mean time it is of the utmost importance that you say nothing against the quarry until you have seen me. We shall send up two hundred and fifty dollars this week, and part of it to-morrow, with our communication to you. I hope you will stop the stage to-morrow, and not let our communication go on to Dover. You say, had the stone for the Portsmouth contract been only one foot rise, as you supposed it to be, or one foot ashler, you would have completed the contract. If that is the case, you can as well get out ashler for other works, which stone are in great demand in Boston and elsewhere. You recollect you are engaged to us for one year. Should we write for you to come direct to Boston, instead of giving up the contract first, you will have to come to Boston after, in order to consult what it is best to do.

I must request you again to keep your views of the quarry to yourself until you have seen me.

Yours, truly,
J. J. FALES.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this thirtieth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Levi Bates to come before me, in Roxbury, in the county of Norfolk, in said district, and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence, and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE,
Commissioner.

I, Henry Gilbert, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, of the age of about thirty years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories proposed by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. Whether or not did you board at the Lamb Tavern, in Boston, in the month of November, 1836, or about that time?

Answer. I did.

2nd interrogatory. Whether or not you are acquainted with Adams Daniels and Samuel Warner; when did you first see said Warner to know him?

Answer. I am acquainted with Adams Daniels, but I am not ac-

quainted with Samuel Warner; I have seen said Warner, but was never introduced to him, and cannot say that I am personally acquainted with him; I first saw said Warner on or about November, 1836.

3d interrogatory. Was you or not present at any interview between said Daniels and said Warner, in said Lamb Tavern, in said month of November, or about that time?

Answer. I was, at a number of interviews.

4th interrogatory. Did you or not hear Warner say to Daniels something about coming down to trade for his stock?

Answer. I did hear Warner say that he came down to trade for his stock, but did not hear him say that to Daniels; he said so to me.

5th interrogatory. What did you hear Warner say to Daniels about that matter?

Answer. I can't recollect in particular; I heard him talk about trading a farm for the granite stock of Daniels, but can't recollect what was said about it.

6th interrogatory. What did Daniels say to Warner in reply; what inquiries were made by Warner of Daniels; what directions did Daniels give him?

Answer. I do not recollect what Daniels said to Warner in reply; I heard Warner once ask Daniels who knew about the stock; I do not know whether any or what directions Daniels gave him.

7th interrogatory. Was or not Warner in the city, and boarding at the Lamb Tavern, for several days after the interview testified to?

Answer. He was, both before and after the said interview; how many days I can't say, but I should think for four or five days after.

8th interrogatory. Was you or not present at any interview between Daniels and Warner, after the one testified to? If yea, state how long it was after the first interview, where it was, what time of day it was, what Warner said to Daniels; give the whole conversation.

Answer. I was, on the day he left the city; I should think this was four or five days after the first interview, but am not able to state positively; it was in the yard of the Lamb Tavern, in the morning between eight and ten o'clock; I do not recollect what Warner said to Daniels; I cannot repeat the conversation nor any part of it.

9th interrogatory. Was you or not present at a third interview between said Warner and Daniels; when was it; where was it; what time of day was it; what did Warner say to Daniels; what did Daniels reply; what did Warner then do?

Answer. I was not present at a third interview between said Warner and Daniels, within my recollection.

10th interrogatory. What, if any thing, happened immediately after this? State whether or not said Warner started off with his carriage; state whether or not he returned, and how soon, and what for, and all about it.

Answer. I do not know.

11th interrogatory. What did Warner tell you the next morning, or at any other time, about his trade?

Answer. On the same morning that he left the city, it is my impression, I asked Warner if he had traded; he replied that he had, and appeared to be well pleased with it; I do not recollect seeing him on the next morning, or having seen him since that time.

12th interrogatory. Did you or not own, at that time, any granite stocks, or had you owned any such immediately previous to this time?

Answer. I did own at that time, before that time, and still own, some granite stock.

13th interrogatory. How was granite stock in 1836; was or not $50,000 an unheard of price to give for a well located ledge; was or not granite stock a fair article of traffic then, and in many instances selling at par?

Answer. Granite stock was in good repute at that time; I should not think $50,000 an unheard of price to give for a well located ledge, as things were then; it was a fair article of traffic then; I think it was in many instances selling at par, but am not positive; I have no recollection of any particular stock that sold at par.

14th interrogatory. What was the reputation of the Cleft Ledge Granite stock at that time? Had you ever owned any of it; or known of the sale of any of it? If yea, at what price?

Answer. The Cleft Ledge Granite stock, at that time, so far as my knowledge extends, was as good as any granite stock in the market, except some old ledges that had been opened and worked; I never have owned any of it; I have known of the sale of it; I do not recollect at what price.

15th interrogatory. Did or not Warner perfectly understand about this kind of stock, in that they were considered fancy stocks by him, and so spoken of between you? Please define fancy stock, and the Cleft Ledge stock, as you and Warner understood it, and conversed about it, during the several interviews you had with him during his stay in Boston at that time.

Answer. Warner seemed to understand perfectly that this was considered fancy stock; and said it was more necessary to look into it for that reason; and that he was making enquiries about it; I can't define fancy stock, otherwise than by saying it is stock that the assessments are not paid in, and makes no dividends; I then considered the Cleft Ledge stock as stock of the best quality of this description of stocks; and presumed that the ledge would be opened and worked to advantage; and also that Warner so understood it; I do not mean to say that I consider fancy stock only such as have not paid in any of the assessments thereon, but such as the assessments thereon are not fully paid in.

The reason of my recollecting more particularly what I have above stated, than I might otherwise have done, is because I owned some granite stock and was in hopes that I might have exchanged it with Daniels for his stock, that he exchanged with Warner for his farm.

The plaintiff objects to the testimony of Henry Gilbert, and interrogatories propounded to him by the defendants, as wholly irrelevant.

Cross interrogatories propounded by Jonathan P. Bishop, esquire, plaintiff's solicitor.

1st cross interrogatory. If your answer to defendants' second direct interrogatory is, that you are acquainted with said Daniels and Warner, will you state how long and how intimately you have been acquainted with said Daniels? Have you ever had any business transaction with him? If so, what? Have you boarded with him? If so, when, and how long?

Answer. I never was very intimate with Daniels; my acquaintance commenced with him about six months previously, at the Lamb Tavern, in Boston, where we both boarded; I boarded there for about two years, and Daniels was there, off and on, more or less during the whole time; I don't recollect ever having had any business transaction with him; and was no more intimate with Daniels than with other persons with whom I boarded for the same length of time, and in the same manner.

2d cross interrogatory. If you say you have an acquaintance with said Warner, will you state particularly *how such* acquaintance was formed; by a regular introduction, or otherwise? Who introduced you to him?

Answer. My acquaintance with Warner was formed by my hearing that he was desirous to trade for granite stock, and I having such stock to sell, I introduced to him the subject as a topic of conversation; I never had a regular introduction to him; I cannot state the time of day that I first conversed with him, nor the particular day; it was in the dining-room or sitting-room of the Lamb Tavern.

3d cross interrogatory. Will you now say you should know said Warner if you should meet him, without any hesitation or danger of mistaking him for another, or another for him?

Answer. I very probably should not know him.

4th cross interrogatory. If you have a distinct recollection of said Warner, will you describe his person? What his height? Is he corpulent or lean? What his complexion, light or dark? What the color of his eyes? His hair? What his age? Was his nose what would be called Roman, Grecian, or Aquiline? Were his eyes full and round or sunken? How his eye-brows? How his forehead? Had he any scar or any other marks upon his face peculiar, that would cause one, upon a short acquaintance, to recollect him for eight years?

Answer. I should think, to the best of my recollection, that he was a middle sized man, thick set, but not corpulent; I do not recollect whether his complexion was light or dark; I do not recollect the color of his eyes or hair, nor age, but should suppose him to be about forty years old; I do not recollect about his nose; I do not recollect whether his eyes were full and round or sunken; nor about his eyebrows, or forehead; I do not recollect that he had any scar or any other mark upon his face that would cause one, upon a short acquaintance, to recollect him for eight years.

5th cross interrogatory. If you have answered the second direct in-

terrogatory by saying you *do* know *Samuel* Warner, of Providence, the plaintiff in this suit in equity, will you state how you learned his given name to be *Samuel*? When and of whom did you learn his given name? Was he introduced to you by that name, 'Samuel Warner,' or what was he called upon introduction? Has not Adams Daniels told you since that the Mr. Warner's name, which he brought to your recollection, was "Samuel?"

Answer. I learned that the given name of said Warner was *Samuel* at the time I first knew him, but can't recollect in what manner I ascertained it; but think it was either by hearing him answer to that name, or seeing his name on the books; and perhaps in both ways; he never was introduced to me as I recollect; I have no remembrance that Adams Daniels has ever told me that said Warner's name was Samuel.

6th cross interrogatory. If your answer to third direct interrogatory is yea, will you be very particular and state how it is you can fix the time to be in the month of November, 1836? Why do you say November, 1836, rather than October or December, 1836, or November, 1835? Has not said Daniels helped you to fix the time and to refresh your memory as to when you and he saw one 'Samuel Warner' at the Lamb Tavern, in November, 1836? And has he not lately told you his given name was Samuel, or have you always kept it in fresh remembrance?

Answer. On or about the time said trade was made, I had just returned from New York, and within a fortnight after I went to Mr. James Hendley's as a clerk, and gave up all idea of doing anything farther in fancy stock business; and I went to Mr. Hendley's in November, 1836; and I have no recollection that said Daniels has ever helped me to fix the time, or to refresh my memory as to the time when I and Daniels saw said Samuel Warner at the Lamb Tavern, in November, 1836; I do not think I have spoken to Daniels for a year upon any subject, and have seen him but once within that period, and then in the street, but not near enough to shake hands with him; I presume he has called said Warner's name *Samuel*, but I do not recollect that he ever has called him by his christian name.

7th cross interrogatory. If you answer the 4th direct interrogatory in the affirmative, will you be very particular and state where you, Warner, and Daniels, were when you heard the same; had you been introduced to Warner before you heard this, or was it afterwards that you were introduced to him?

Answer. When I heard Warner say what I have stated in my answer to the 4th direct interrogatory Daniels was not present that I recollect, it was in the Lamb Tavern; I never was introduced to him.

8th cross interrogatory. If you answer the 4th, 5th, and 6th direct interrogatories by stating what Warner said, and what Daniels then said, will you be sure and give all each said, and the exact order in which the same was spoken by each; and if you attempt to do so, will you state whether you do now state all each said in the regular order the same was spoken by them, and that you are now positive that not a material

word spoken by either is omitted, or one not spoken by either is by you added to the colloquium?

Answer. I have stated the substance of all that I remember; I do not recollect what was said in detail, or all that was said, or the order; and I am not sure that I have stated all that was said, or that I have used the very language used, but have stated all that I remember, and as I then understood it.

9th cross interrogatory. If you answer the 7th direct interrogatory in the affirmative, will you state how you can recollect how long any person stopped at that place eight years ago without referring to the books of the house, or some refreshing influence from some other quarter?

Answer. I recollect the time he stopped at the Lamb Tavern from my having granite stock which I wished to dispose of, and from my having heard that Warner was there trying to make a trade with Daniels for granite stock.

10th cross interrogatory. If you do recollect all enquired of you in the 8th, 9th, 10th, and 11th direct interrogatories, and attempt to give the exact location, the precise time of day, with each and every word each said to the other in their due order, will you state how old you was then; what was and has been since your business; what was there so peculiar in a casual introduction to a stranger that should fix it so indelibly upon your memory; what was there about the circumstances of said Warner stopping at the Lamb Tavern a few days, that impressed your transitory acquaintance with him more upon your memory than that of others calling there? Have you never before or since that memorable event been introduced to any other gentleman? Are said Warner and Daniels the only persons you have ever heard, either before or since, talk about any business transaction; or have you been frequently introduced to others, and often heard other men talk of business of as much or more importance to themselves, but no interest to you, and therefore all such, except the solitary one of Daniels and Warner, have escaped your recollection; is this so?

Answer. I was about twenty-four year sold, and had been previously a clerk part of the time; part of the time was out of business, except trading a little in fancy stocks; I was then out of business. Since that time I have been a clerk part of the time, and part of the time have been engaged in mercantile business on my own account and risk. The reason of my recollecting what I have stated in my former answers, is because I had granite stock which I wished to dispose of, and have still some of it, and because I had learned that said Warner was about trading for granite stock with Daniels, and therefore felt an interest in that trade, so far as it related to stock of the same character as that which I held; I know of no other reason that I should remember what I have stated. I have been acquainted with other persons, and have heard them talk about business of as much or more importance to themselves, and in which I took no interest, but still have a general recollection of.

11th cross interrogatory. If you say you boarded at Lamb Tavern in Nov., 1836, state how long prior and afterwards. What was about the average number of boarders and transient persons who daily stopped there in 1836? Can you recollect one other instance of an introduction to a stranger in November, or any other month in 1836; and by whom introduced; where and when; and precisely word for word all that was said by you, them, and others? If so, give another specimen of your powers of recollection.

Answer. I boarded at the Lamb Tavern, to the best of my recollection, from some time in the year 1835, or first of the year 1836, to the year, or about the year, 1838. I should think that the average number of boarders and transient persons who daily stopped there, in 1836, was about thirty; but this is a mere guess; I have no means of judging with accuracy; I never was introduced to said Warner, and have no recollection of being introduced to any stranger in November, or any other month in 1836.

12th cross interrogatory. Did you ever hear said Daniels have any conversation with any other person about the Cleft Ledge Company or the stock? If so, with whom; when and where was it; what did he say; what did they reply; did he have other interview with the same person afterwards? If so, what did Daniels then say, at the second interview; what was replied; and then if there was a third, what was said by Daniels and the other then, and so on; giving word for word all that was said by each, with the time of day, place where they stood, and where you stood, &c., &c., at each interview, and then if one started to go away and came back and said something, what was it?

Answer. I have heard said Daniels converse with Richard Nutter, Mr. Crease, and my brother, and I have no doubt with other persons, about the Cleft Ledge Company, and the stock, principally the latter, at the Lamb Tavern, where all boarded. I cannot state the time, but both before and after the trade of Warner before mentioned; I do not recollect what he said, nor what they replied. The conversation was about the value and worth of the stock, &c.; the same persons conversed with him frequently about it; I cannot recollect what was said by either, at either of said interviews, more or farther than I have above stated; neither can I state the time of day; it was at the Lamb Tavern; I cannot make farther answer to this interrogatory.

13th cross interrogatory. If you pretend to recollect distinctly, at this length of time, all that was said by Daniels and Warner, were you by Daniels requested to treasure the same up in your memory for him; or did you voluntarily take any particular pains to keep the same in remembrance; or have the several conversations, by you testified to, without any request or any effort to retain the same, remained distinct and clear, and not in the least obliterated in your mind by the many conversations you have since heard between other gentlemen upon other business transactions? Did you not, at the time you heard Daniels and Warner talk, know that Warner was having a delusion practised upon him, and that in receiving said granite stock for his farm he was in

word spoken by either is omitted, or one not spoken by either is by you added to the colloquium?

Answer. I have stated the substance of all that I remember; I do not recollect what was said in detail, or all that was said, or the order; and I am not sure that I have stated all that was said, or that I have used the very language used, but have stated all that I remember, and as I then understood it.

9th cross interrogatory. If you answer the 7th direct interrogatory in the affirmative, will you state how you can recollect how long any person stopped at that place eight years ago without referring to the books of the house, or some refreshing influence from some other quarter?

Answer. I recollect the time he stopped at the Lamb Tavern from my having granite stock which I wished to dispose of, and from my having heard that Warner was there trying to make a trade with Daniels for granite stock.

10th cross interrogatory. If you do recollect all enquired of you in the 8th, 9th, 10th, and 11th direct interrogatories, and attempt to give the exact location, the precise time of day, with each and every word each said to the other in their due order, will you state how old you was then; what was and has been since your business; what was there so peculiar in a casual introduction to a stranger that should fix it so indelibly upon your memory; what was there about the circumstances of said Warner stopping at the Lamb Tavern a few days, that impressed your transitory acquaintance with him more upon your memory than that of others calling there? Have you never before or since that memorable event been introduced to any other gentleman? Are said Warner and Daniels the only persons you have ever heard, either before or since, talk about any business transaction; or have you been frequently introduced to others, and often heard other men talk of business of as much or more importance to themselves, but no interest to you, and therefore all such, except the solitary one of Daniels and Warner, have escaped your recollection; is this so?

Answer. I was about twenty-four year sold, and had been previously a clerk part of the time; part of the time was out of business, except trading a little in fancy stocks; I was then out of business. Since that time I have been a clerk part of the time, and part of the time have been engaged in mercantile business on my own account and risk. The reason of my recollecting what I have stated in my former answers, is because I had granite stock which I wished to dispose of, and have still some of it, and because I had learned that said Warner was about trading for granite stock with Daniels, and therefore felt an interest in that trade, so far as it related to stock of the same character as that which I held; I know of no other reason that I should remember what I have stated. I have been acquainted with other persons, and have heard them talk about business of as much or more importance to themselves, and in which I took no interest, but still have a general recollection of.

11th cross interrogatory. If you say you boarded at Lamb Tavern in Nov., 1836, state how long prior and afterwards. What was about the average number of boarders and transient persons who daily stopped there in 1836? Can you recollect one other instance of an introduction to a stranger in November, or any other month in 1836; and by whom introduced; where and when; and precisely word for word all that was said by you, them, and others? If so, give another specimen of your powers of recollection.

Answer. I boarded at the Lamb Tavern, to the best of my recollection, from some time in the year 1835, or first of the year 1836, to the year, or about the year, 1838. I should think that the average number of boarders and transient persons who daily stopped there, in 1836, was about thirty; but this is a mere guess; I have no means of judging with accuracy; I never was introduced to said Warner, and have no recollection of being introduced to any stranger in November, or any other month in 1836.

12th cross interrogatory. Did you ever hear said Daniels have any conversation with any other person about the Cleft Ledge Company or the stock? If so, with whom; when and where was it; what did he say; what did they reply; did he have other interview with the same person afterwards? If so, what did Daniels then say, at the second interview; what was replied; and then if there was a third, what was said by Daniels and the other then, and so on; giving word for word all that was said by each, with the time of day, place where they stood, and where you stood, &c., &c., at each interview, and then if one started to go away and came back and said something, what was it?

Answer. I have heard said Daniels converse with Richard Nutter, Mr. Crease, and my brother, and I have no doubt with other persons, about the Cleft Ledge Company, and the stock, principally the latter, at the Lamb Tavern, where all boarded. I cannot state the time, but both before and after the trade of Warner before mentioned; I do not recollect what he said, nor what they replied. The conversation was about the value and worth of the stock, &c.; the same persons conversed with him frequently about it; I cannot recollect what was said by either, at either of said interviews, more or farther than I have above stated; neither can I state the time of day; it was at the Lamb Tavern; I cannot make farther answer to this interrogatory.

13th cross interrogatory. If you pretend to recollect distinctly, at this length of time, all that was said by Daniels and Warner, were you by Daniels requested to treasure the same up in your memory for him; or did you voluntarily take any particular pains to keep the same in remembrance; or have the several conversations, by you testified to, without any request or any effort to retain the same, remained distinct and clear, and not in the least obliterated in your mind by the many conversations you have since heard between other gentlemen upon other business transactions? Did you not, at the time you heard Daniels and Warner talk, know that Warner was having a delusion practised upon him, and that in receiving said granite stock for his farm he was in

effect throwing his farm away? If you do recollect what passed between Daniels and Warner, and do not other similar conversations between others, was it not that this knowledge of the nature of the transaction so operated upon your moral sensibilities, as to leave an indelible impression that remains, while others have passed from your memory? Were there or not other, and if other, what other persons besides yourself, at any of the interviews you may have testified to between Warner and Daniels, or between you and Warner? If there were others, name particularly what other persons were present at each interview; or if you cannot name them, describe them particularly.

Answer. I never was requested by Daniels to treasure up any thing that was ever said by any body, at any time, or on any subject; and I did not take any pains to keep any thing I have stated in remembrance; and what I have stated, I state from my best recollection, without any request or any effort to retain the same; and I state no more than I have a clear and distinct remembrance of; I did not know that Warner was having a delusion practised upon him; I never heard Warner and Daniels talk together except as I have above stated; I did not know that said Warner, in receiving granite stock for his farm was, in effect, throwing his farm away; I never knew the terms of their trade; the only reason that I now remember what I have stated in relation to the subject inquired of, I have assigned before, and not because this transaction operated upon my moral sensibilities; I think Mr. Adams and Mr. Crease were present at the interviews between me and Warner—whether any other persons were present I am not able to say—neither can I say that they, or either of them, heard what was said; whether any person was present at any other of the interviews stated by me, I cannot remember.

14th cross interrogatory. Have you, since the commencement of this suit, had conversations with said Daniels or said Fales, or with any one else, (if so, with whom,) about the merits of this suit? If so, state when, with whom, and the different conversations, fully and distinctly, especially what has been said to you upon the subject.

Answer. I do not know when this suit was commenced; I never had any conversation with Fales upon this suit; about a year ago Daniels said to me that he believed, or that Warner was about to try to get back his farm, and he should want me as a witness, and asked me if I recollected about the trade, which was the substance of the conversation; I did not state to him what I recollected about it; and this is all that I recollect about this suit, that I conversed with said Daniels, at any time; this conversation was in the store of Nutter & Company. Since I have been summoned to give this deposition, I have talked with Nutter about this suit; yesterday, in his store, in Boston, I told him I had been summoned to give my deposition, and asked him if he had been summoned; he said he had not; he said he did not recollect much of any thing about it; he said he recollected about Warner's making the trade, and feeling very much pleased about it, and that was about all that he recollected about it; this was the substance

of the conversation. The above conversations, to the best of my remembrance, are all that I have had with any person in relation to this suit, or the merits of it; I may have had talk with Daniels, in a joking way, about the granite stock, but not about this suit, other than I have above stated.

15th cross interrogatory. Has said Daniels not stated to you the substance of Warner's charges against him and Fales, and told you what his defence was; or either; or something to that effect? If so, when, where, and what has he said?

Answer. No.

16th cross interrogatory. Has not said Daniels called upon you to know what you could recollect of the conversation between him and said Warner, of which you have been interrogated?

Answer. No; except as stated in my answer to the 14th cross interrogatory.

17th cross interrogatory. Has not said Daniels stated to you what he wished to prove by you on his defence? Has he not stated to you what the conversation was, and then asked you if you did not recollect the same? Could you at first recollect any, or much, of said conversation? Has any thing of the kind occurred? If so, state fully.

Answer. No.

18th cross interrogatory. Has said Daniels ever expressed any surprise that you should have forgotten the conversations between him and Warner, and said to you he wished you would recollect what was said, for it was important for him, and he would satisfy you for your trouble; that money was no object with him in the matter; that he was determined to spare no expense or means in defending said suit; or any thing of the kind?

Answer. No.

19th cross interrogatory. Has not said Daniels reiterated what he and Warner said, with earnestness, and said to you, 'you cannot have forgotten what took place so but you could bring it to your mind by reflection;' or something of the kind?

Answer. No.

20th cross interrogatory. Has not Daniels assisted you to fix in your mind the number of interviews you knew him and Warner to have, and the order in which those interviews and conversations took place; or have you and Daniels not talked over the subject, to see if you and he recollected alike?

Answer. No.

21st cross interrogatory. Has said Daniels not assisted you in correcting some of your first impressions of what took place in Nov., 1836, at Lamb tavern, and satisfied you that you had not the order of events and conversations as clearly upon your mind, as he had upon his, and satisfied you, upon reflection, that he was right, and you were not quite correct in your first . . . . upon the subject so long passed by?

Answer. No.

22d cross interrogatory. If you answer the 11th direct interrogatory by stating what Warner said to you, state who started the subject, you or Warner; who was present; what did you say to him?

Answer. I first spoke to him, in the yard, at the Lamb Tavern; I think Laban Adams, who kept the house, may have been present, but am not certain, and I think Nutter was also present; I think I asked him if he had concluded his trade with Daniels.

23d cross interrogatory. If you ever owned any granite stock, what stock was it; when, and of whom did you buy it; what did you pay for it; was there any real capital ever paid into the company, or was there a charter obtained, and stock struck off, and a set of vagabonds employed to palm it off as valuable, upon the honest part of the community; is the same stock worth any thing now; why not; had the company ever one dollar's worth of real capital; if so, of what did it consist; if of a ledge, was that ledge not mortgaged for ten or more times its real value? Please state and give the biography of the Granite Company, from its first inception to its demise in which you owned stock, as inquired of in 12th direct interrogatory.

Answer. United States Granite Company; I bought it of T. Thayer, in New York, in May or June, 1836; I exchanged some stock in a coal company for it; I cannot say whether any real capital was ever paid into the company. It was guaranteed to me that thirty-five dollars on a share had been paid in by the person of whom I bought; whether any charter was obtained I know not; and I know not that any person was ever employed to palm it off as valuable upon any person, honest or otherwise; I cannot say whether or not the same stock is worth any thing now; neither can I say whether the company ever had one dollar's worth of real capital; I never saw the ledge; and do not know of any mortgage upon it. The stock purports to have issued in Dec., 1835, which is all that I know of its biography, from its first inception, and I have not heard of its demise.

24th cross interrogatory. If you undertake in answer to the 13th direct interrogatory, and state how granite stock was in 1836; please answer so as to be understood, viz., were you knowing to any such stock existing at that time, and got up that or the year before, to pay off its indebtedness and one dollar of dividends to its stockholders? If yea, what stock was it? If nay, was it not because they were all fictitious affairs, got up for swindling and not for operations?

Answer. To the first part of this interrogatory I answer, *no*; and I have no knowledge of any fictitious affairs of this character got up for swindling, and not for operation.

25th cross interrogatory. If you ever knew $50,000 in 1835 and 1836, actually *paid* for a granite ledge, in *cash*, or other good security, independent and distinct of a mortgage of the ledge itself, please state where the case happened, who where the purchasers, and who the sellers, and other facts about the case that will show the real value of "fancy granite stock" in 1836?

Answer. I can't state that I know of $50,000, of my own knowlege,

in 1835 or 1836, actually paid for a granite ledge, in cash, or other good security; but I have heard that such sums have been paid in on a number; I do not know where the case happened; who were the purchasers, or who the sellers, or any other facts about them that will show the real value of fancy granite stock in 1836.

26th cross interrogatory. If you ever learned the reputation of the Cleft Ledge Granite stock in 1836, of whom did you get its reputation; did you ever hear of any capitalist enquiring after or seeking for an opportunity to invest in it; have you ever owned any of it as enquired in 14th direct? If so, of whom did you purchase; what did you pay for it; in what article did you pay; what quantity of that stock did you ever know sold for cash; to whom, and by whom; what have you known it bartered for?

Answer. I never had a great deal of knowledge of the Cleft Ledge Granite stock; I recollect that James Willis told me something about it; he belonged in Maine, as I believe; Joseph Stone also told me that he had been over it, and knew all about it; and that it was a valuable ledge, and with a very little expense it might be worked to advantage; and others have talked to me about it. I never heard of any capitalist enquiring after or seeking for an opportunity to invest in it; I never have owned any of it; I never knew of any of it being sold for cash; I do not know what it has been bartered for except with said Warner for his farm.

27th cross interrogatory. You were asked whether Warner perfectly understood this kind of stocks were considered 'fancy stocks,' and asked to define 'fancy stocks,' &c., in direct interrogatory 15th; will you state whether the obtaining a charter alone, without accepting that charter, makes 'fancy stock,' of the capital allowed by a legislative act to be invested as a capital? If nay, what act of a number of individuals who have obtained an act of incorporation creates the 'fancy stock;' does their calling a meeting and choosing their officers create the stock? Is there any fancy stock yet? If not, will a vote of the corporators to divide the sum allowed to be subscribed by the act into shares, but not subscribed, create 'fancy stocks?' Is any stock of any kind created until there is some capital paid into a treasury; is there any difference in the manner in which fancy stocks and dividend paying stocks are formed? If there is, state the difference. Are not all stocks formed by the investment of actual capital by subscribers for the stock; if not, how else are any formed?

Answer. I cannot answer this interrogatory farther than I have already done.

28th cross interrogatory. If you answer the 15th direct interrogatory by saying Warner perfectly understood the Cleft Ledge Granite stock was 'fancy stock,' do you mean by that that he and you understood that there was an actual capital paid in, but, as no dividend had been declared, the stock at that time was 'fancy stock,' because the stockholders as yet had no certainty of realizing any income from their investments; or what do you mean?

Answer. I did suppose that there had been capital paid in, and suppose that Warner thought so; I have no doubt that Warner so thought; I suppose that fancy stocks embrace those that the whole or some part of the assessments had not been paid in, and had never paid a dividend; I am not able further to answer this interrogatory.

29th cross interrogatory. Are not all stocks created for any untried enterprise, before the question of there being any dividends or income upon the investments of the stockholders, 'fancy stock?' Are those same stocks called 'fancy stocks' after the experiment is tried, and they are found to pay regular dividends and a fair per centage upon the investment; or are they then called dividend paying stocks?

Answer. If they paid regular dividends, I should consider them dividend paying stocks; if they never paid dividends, I should consider them fancy stocks.

30th cross interrogatory. Do you pretend to say, that an actual investment of capital is not as necessary to raise 'fancy stocks' as dividend paying stocks? Or do you say any stock can be created without any investment? If yes, can such stock have any value?

Answer. I should not consider that stock could be created without investment of capital of some kind; but I cannot answer the remainder of this interrogatory.

31st cross interrogatory. Have you ever had any agency in getting up any granite companies, or any other companies, without any investment of capital; or have you ever had the agency of selling any such stock? If so, what stocks were they?

Answer. No.

32d cross interrogatory. If you answer the 15th direct in the affirmative, will you state fully and particularly what you know about the Cleft Ledge Co., before your first acqaintance with said Warner? Had you any knowledge of the manner, and by whom it was got up? If so, state what you knew about it, and from whom, and by what means, you learned it? If you know nothing, except by reputation, what was that reputation? Who did you ever hear speak of said company or its stock, previous to your introduct on to said Warner? If no one, how did you know its reputation?

Answer. All that I know of the Cleft Ledge Company, I learned previously to the time mentioned in this interrogatory, from James Willis, Joseph Stone, and others that I do not recollect; who stated to me that it was a valuable ledge, and could be opened with little expense, or to that effect. I had no knowledge of the manner, or by whom it was got up.

33d cross interrogatory Did you ever know any thing about said company or its stock, except what you learned from said Daniels and said Fales, a Mr. Thompson, or some one connected with the concern? If yea, state any thing you ever heard about it from any other source; with the source, time when, and place where, with the number of times and places when and where you have heard the same persons speak of

the same, as particularly as you give what said Warner said about the same.

Answer. I have heard Daniels say that he thought the stock good stock, and never heard him say any thing in particular more than that about it. I never heard Fales. or Thompson, or any [one] else, that I knew to be connected with the concern, say any thing about it. I have stated already what I have heard about it from other sources, and all that I have heard about it, and the sources, at various times, and in divers places.

34th cross interrogatory. At the time of your interview with said Warner, did you know exactly the means used, and the persons who got up the affair called the Cleft Ledge Granite Company? If so, what were the means, and who were the persons? What was their first operation in getting it up? What was the farm worth, which they bought? What did they sell the same for to themselves, after they were incorporated? How did they, as a corporation, pay themselves individually for the same farm?

Answer. I did not.

35th cross interrogatory. If you know the affair called the Cleft Ledge Granite Company was got up in such manner, and by such means, could you in conscience sit by and lend your aid, and assist said Daniels in working off what he called its stock, upon said Warner, for, and as worth its par value?

Answer. I did not lend my aid or assist said Daniels in working off this stock upon said Warner, for, and as worth its par value, or any other value; but should have prevented their trading, if I could have done so, that I might have traded with *Daniels* myself.

36th cross interrogatory. Do you say that what Daniels sold to Warner was 'fancy stock,' according to your definition of the term; or was it a 'bubble' got up to cheat and defraud the public?

Answer. I give no opinion upon it. I do not know how, or for what purpose it was got up; and I do not feel able to make farther answer to this interrogatory.

37th cross interrogatory. Was what Daniels sold Warner, in your opinion, a 'fair article of traffic;' and did such articles sell, in 1836, to men of common sense at a par value, without frauds being produced upon them, either by the suppression of the truth, or suggestion of falsehood by the seller?

Answer. This was a fair article of traffic at that time, and did then sell to men, then and now considered of common sense; at what value I know not; and to the remainder of this interrogatory I am not able to make answer.

38th cross interrogatory. Has Daniels, or Fales, or any other one, either directly or indirectly, given you to understand, and prepare yourself to answer any interrogatories put to you in this case, by directing your attention to any particular matter, or by reading, or shewing you a copy of these interrogatories, or any thing of the kind?

Answer. About a fortnight since I received at my store the direct in-

terrogatories herein proposed, or a part of them; from whom they came, I know not; I, at that time, supposed they came from the attorney of Daniels. I received them without a word of comment; nothing was written on the envelope, or within it, and merely enclosed the interrogatories. To the rest of the interrogatory I answer no; and further, that I have not seen Daniels or Fales, nor had any communication with them, or either of them, or any other person, in relation to the matter inquired of in this interrogatory.

HENRY GILBERT.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

On this sixteenth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Henry Gilbert to come before me, in Roxbury, in the county of Norfolk, in said district; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commiss'r.*

I, Charles T. Jackson, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, doctor of medicine, of the age of about thirty-nine years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age and occupation, and where do you reside?

Answer. My age is about thirty-nine years; my occupation is that of a geologist and chemist; and I reside in Boston, in the county of Suffolk.

2d interrogatory. Will you please to observe the report hereto annexed, purporting to be made and signed by you; was or not the same made and signed by you?

Answer. Yes.

3d interrogatory. How much attention have you given to the subject of which said report treats?

Answer. I spent two days in the examination of the quarry mentioned in said report, and examined it faithfully.

4th interrogatory. Are or not the facts stated in said report *true* to the best of your knowledge and belief?

Answer. They are.

5th interrogatory. When you made said report, was or not granite and granite quarries in request?

Answer. Yes, in great request.

6th interrogatory. What prices were good quarries favorably located then bringing? What did other quarries within your knowledge bring? What was paid for the Kennebunk quarry? What for the Blue Hill?

Answer. I do not remember what prices good quarries favorably located were then bringing, but they were selling at very high rates. One quarry was sold about that time at Quincy, at from fourteen thousand to twenty thousand dollars; I do not remember what was paid for the Kennebunk quarry, nor what was paid for the Blue Hill quarry. In my reports on the geology of the State of Maine, I have given all the statistics I had been able to collect on this subject, and I refer to said reports for further answer to this interrogatory.

7th interrogatory. What was the prospect when you reported on said ledge, of the owners being able to work it to advantage? Detail the facts that went to constitute that prospect. What, if any thing, took place, or was learned by you afterward, which changed the prospects of said owners? And if yea, state what it was.

Answer. The scarcity of good granite, and the high price it then brought; and the scarcity of platform stones, which were very fine at this quarry; and the dark color of the stones, which was then, and I believe still is in its favor; its vicinity to the Portsmouth market, where considerable sales might be made, good granite not being found in that town; and the want of extensive competition from other sources, and the abundant supply. The extensive competition brought about by working quarries on the coast of Maine, and at Cape Ann, and consequent glut of the market from the superabundant supply; while many of the quarries of Maine admitted the approach of vessels near enough to take granite on board from the wharf—the Durham granite requiring transportation first from the shore in scows to the vessels in the river; (this latter circumstance increasing the cost, by the additional labor required,) and the introduction of platform stones from the Hudson river, in New York, at very low cost, diminishing the price of platform stones to less than half their former value, conduced to change the prospects of said owners, afterward and the high price of money also had an important influence upon their prospects subsequently; and I also refer to my first annual report on the geology of the State of New Hampshire, pages 45 and 46, for further answer to the last branch of this interrogatory.

8th interrogatory. Was there or not a general stagnation of business in 1837; if yea, did it not affect materially the price of granite? State what you know about it.

Answer. In 1837 and 1838, there was a great revulsion in all operations of this kind, and there were frequent failures among owners of granite and other quarries, and a general stagnation of business; and there was a great reduction in the demand for stones, by reason of the diminution of building; all these circumstances operated to materially diminish the price of granite.

9th interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I do not recollect any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this examination, or the matters in question in the cause, so far as I know or understand, except that there were other quarries in the immediate neighborhood, mostly of light colored granite, none of which, however, had, or have since, so far as I know, been opened.

Cross interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st cross interrogatory. Did you or not ever go out to Durham, N. H.? If yea, when was it; at whose request; by what conveyance; in whose company; what was the business you went upon; what did you do after you got there? How long was you out there? Did you or not go in accordance with the instructions which you received from J. J. Fales? If yea, annex such instructions, or a copy of them, to this answer; or if they were not in writing, or are lost or destroyed, state the substance of them as particularly as you are able.

Answer. I went out to Durham, N. H., at the verbal request of Mr. J. J. Fales, in July, 1836, in the stage coach, alone, to examine a stone quarry, called the 'Cleft Ledge,' and I examined said quarry, measured the stone, and examined the operations of splitting it out, which were going on at that time under the superintendence of a gentleman whose name I do not remember, and made memoranda of the same on the spot, from which my report was drawn up; I examined the wharf, blacksmith's shop, and all other property connected with the quarry; I was there two days; I received no other instructions, except a request from Mr. Fales, that I should examine the quarry and report to him.

2d cross interrogatory. Did you or not know, before you went to Durham, that the object of those who employed you was to get your certificate for publication; what was their object in having your certificate printed; did or not your certificate contain all the discoveries which you made upon the farm?

Answer. I did not know before I went to Durham that the object of Mr. Fales, who employed me, was to get my certificate for publication; I do not know the object in having my certificate or report printed, but suppose for the information of the parties concerned; my report, I believe, contained all the discoveries which I made upon that farm, and an account of other localities of granite seen in the vicinity; the latter was stricken out, at the request of Mr. Fales, as not concerning the parties employing me.

3d cross interrogatory. What did you charge your employers for

what you did for them in the matter of going to Durham, &c.; who paid the same; who assisted you in making the examination?

Answer. I forget whether I charged my employer for what I did in the matters aforesaid forty dollars or sixty dollars, but think the latter sum, at the usual rate of twenty dollars per day, one day being spent in going and returning; my bill was paid by Mr. Fales; the superintendent of the quarry assisted me in the examination.

4th cross interrogatory. When did you first learn that your employers wished your certificate to be printed? Was it or not stated to you that that was their object when they engaged you to go out?

Answer It was not stated to me that it was his object to have my report printed when I engaged to go out, and I believe I had no knowledge that any one desired to have it printed until I saw a printed copy of it.

5th cross interrogatory. Is this or not the first instance in which you have given certificates to be printed and circulated by those getting up granite or other companies? If you have been employed by others in the same way, by whom; when; where; are your certificates all to about the same effect, mutatis mutandis?

Answer. I have examined other quarries before and since that time. I have never given certificates to be printed and circulated by those getting up granite or other companies. I have nothing to do with printing or circulating my certificates, and am not consulted about the printing or circulation of them. I do not know of any other certificate of mine, concerning granite quarries, being printed. I was employed by the Maine Mining Company to examine some quarries on the coast of Maine, in the year 1836, I believe, and by Samuel Smith, to examine a granite quarry in Quincy, Mass., in the spring of the same year, and I was employed by the State of Maine, in 1836, to survey the State, and then examined all the workable quarries in the State, and gave a minute report of the same. My certificates are very various, the exact state of things being always fully represented, both the favorable and the unfavorable, and are more often condemnatory than otherwise.

6th cross interrogatory. Have or not all your certificates been pretty much alike, that is, those about granite quarries; has your price for them been tolerably uniform, or have your prices for them varied; if varied, why? Have you or not made any conditional bargains, the price depending in some measure upon the success of your employers?

Answer. My certificates have varied according to the state of the property reported upon, and have been always as correct as they could possibly be made, as well about granite quarries as upon other subjects; I charge for examination for short jobs, uniformly, twenty dollars per day—my charge never varies; when parties are poor I am obliged to take what they will give me, as persons in other business are obliged to do, as I suppose; I never have made any conditional bargains in the examination of any quarry; my price or charge depending in no measure upon the success of my employers, but directly the contrary, notifying the persons of this rule when first employed.

7th cross interrogatory. Have you or not always made those certifi-

cates out yourself? Have you or not allowed others to assist you? Have you or not allowed your employers to say what facts they would have certified, and what not? Why certify more than they wish? If you were employed to certify facts, what object would it be to you to certify more than your employers wished? Should you certify what he wished you not?

Answer. I have always made out my certificates myself; I have not allowed others to assist me; I have not ever allowed my employers to say what facts they would have certified, and what not, in relation to the property examined for them; I do sometimes certify more than my employers wish, considering all my time, when under their pay, should be employed to their advantage; hence I give them the benefit of all the information I may obtain; I should certify what my employers should desire me not to do, if it concerned the property examined, as I have frequently done.

8th cross interrogatory. Did you or not in your certificate hereto annexed give some facts an extremely high coloring as you now look upon the same?

Answer. No. I described faithfully the facts in the case.

9th cross interrogatory. Did you or not omit to state some very material facts about said ledge, which ought to have been known by those about to buy stock, and which would essentially alter the value of said ledge and stock?

Answer. I do not think I omitted any thing concerning the property in question.

10th cross interrogatory. Did you or not discover that said rock could not be wrought into large work, and that the seams in the ledge would admit of its being used in small work only?

Answer. Yes, it is so stated in my report.

11th cross interrogatory. After you had examined said farm and ledge, would you, knowing the same was under a mortgage of $2,500, have taken a deed of the equity of redemption in pay for your services?

Answer. It is a rule with me never to own or be interested in any mines or quarries, that I may stand a disinterested witness; therefore, I should not have purchased this ledge or farm at any price; I have frequently refused stock in quarries and mining companies, of great value, both in pay for services and for the sake of making me a proprietor, but have never accepted any such offers for the reason above stated; and because I do not wish to engage in mercantile business, but desire to devote myself exclusively to scientific pursuits.

12th cross interrogatory. What, in your opinion, was said farm and ledge worth at the time you examined it?

Answer. I do not know; I never made any calculation.

13th cross interrogatory. How large a plat of ground did the ledge cover? Was there or not another ledge or other ledges near by on other land than this farm? Which of these ledges was, in your opinion, the best located and most valuable?

Answer. The tract of land covered about sixty acres, and it is all

underlaid with granite; there were other ledges near by on other land than this farm now spoken of; the granite in the other ledges was of a different character, of a light color; the other quarries were not open, and I am not able to judge which is, or was, the most valuable; the situations or localities of the other ledges were very similar.

14th cross interrogatory. Did you or [not] notice any other ledges in the town of Durham? Did you or not learn or understand, or have any hints or intimations, that induced you to suspect or believe there were any other ledges of granite in the town of Durham, or any where about there?

Answer. I was aware of the existence of other ledges in the town of Durham; and examined some of them slightly, and noticed them in my report.

15th cross interrogatory. Did you or not, at the time you gave your certificate, believe said Leather's farm and ledge was of more value than the average of farms in Durham of the size?

Answer. I had nothing to do with the farm; I examined only the quarry; and no comparison could be instituted between the quarries, because no other quarries were opened.

16th cross interrogatory. Did you or not, at the time you gave your certificate, consider said ledge of any uncommon value more than any other granite rock in New Hampshire, the same distance from boatable water? If so, why?

Answer. I did consider it of uncommon value, more than any other of the granite rock in New Hampshire of the kind, because of its dark color, and of its splitting into platforms, which were particularly valuable at that time; and are very valuable still, but not so much so as formerly, by reason of competition.

17th cross interrogatory. Did you or not consider said farm and ledge so extremely valuable, that a company buying it at $55,500, could have a possibility of ever realizing that sum of money by operating upon it?

Answer. I made no estimate upon it; but should consider it very foolish to invest so much capital as $55,500 in any quarry; a quarry may be considered an opportunity for the investment of labor, but not for the investment of money, further than is necessary to carry on the operations of quarrying.

18th cross interrogatory. Was or not your opinion of said farm and ledge such you would have given one dollar over $2,500 for them?

Answer. I would not have bought it at all, because I did not want any property of the kind, for the reasons before mentioned.

19th cross interrogatory. Did you notice the house and barn upon said farm? Were they large and commodious? New and durable to appearance or otherwise? How were the fruit trees, what number, what kinds, grafted fruit or natural?

Answer. I did notice the house and barn upon said farm; I do not remember their size; they were commodious; the barn was old; the house was in good order, and durable to appearance; I noticed merely

that there were fruit trees, but did not notice the kind, or number, nor whether grafted or natural.

20th cross interrogatory. How was the shed at the quarry built; in a cheap manner of poles stuck in the ground with rough boards, or otherwise?

Answer. I did not notice any shed at the quarry.

21st cross interrogatory. Was or not this business of geological examination of ledges something of a business in 1836? Did or did not the owners of granite in Quincy have you examine theirs and certify about them? Have you or not ever seen in circulation any certificates cracking up any ledge that proved to be of any value?

Answer. There was not much business done in geological examinations of ledges in 1836, so far as I was concerned; further than that I cannot speak; I examined one quarry in Quincy and gave a certificate of it; I have seen in circulation certificates representing ledges to be of good quality and of great value, which proved valuable.

22d cross interrogatory. Have you or not ever been called upon to certify about any *eastern* land, either granite ledges or timber land, in Maine? If yea, what was your price for a good certificate?

Answer. I have been occasionally called upon to give certificates about granite and other quarry stones in Maine, but never concerning eastern lands, or timber lands; at first, I charged nothing; but, finding my time taken up, I sometimes charged five dollars; my charge for a favorable certificate was no more than for an unfavorable one; my price being the same for both; I charged for the time employed; in all cases, when I gave a certificate, precaution was taken, in the certificate, to guard the public against imposition, by calling attention to those things which ought to be examined into.

23d cross interrogatory. Will you please to state how much time you spent in the examination of said ledge? Whether you did or not go to Durham in one day and return the next, or how otherwise? State also what examination you made of said ledge; whether by the eye only in looking over the quarry and quarried stone, and the situation of the ledge with respect to the river and surrounding ground, or whether you subjected the said granite to any chemical analysis or other test to decide upon its composition; what intermixture, and in what proportions of "quartz, feldspar," and black mica," is, in your judgment, necessary to the forming of an "elegant" granite; and in what proportions are they usually intermixed in "elegant" granite; does the composition of the granite of that quarry differ from that of other quarries and ledges in the same neighborhood and town; if so, in what respects?

Answer. I spent two days in the examination of said ledge; I went to Durham on one day, spent a day there, and returned the next, I think; I may have spent two days there; I examined it by the eye, and the microscope; breaking off numerous pieces for that purpose, and examined the faces of the split stones; searching particularly for any injurious minerals that might be present; no chemical analysis was applied, as it would not determine the value of it; it is only necessary to exam-

ine the integrant minerals; the proportions of feldspar, quartz, and mica, requisite in a good and handsome granite, are such as give it the greatest strength, evenness of texture, and brilliancy of lustre; these can be judged of only by the eye; these proportions are a matter of taste only, so far as regards beauty; the proportions and intermixtures cannot be determined with accuracy; the proportions vary; it is sufficient that there is enough, and of the kind, to give it strength and brilliancy; dark colored mica, like that, is comparatively rare; and it differs in this respect from other quarries in that vicinity; and I did examine the situation of the ledge, with respect to the river and surrounding ground, by walking over and viewing it.

24th cross interrogatory. Did you or not subscribe said report as 'chemist and geologist;' was it in your character of 'chemist and geologist,' or either of them, that you reported as to the condition of the house upon the estate, or the 'little garden with fruit trees,' or the size and age of the barn, or the blacksmith's shop, or the quantity of tools therein, or the facilities for transportation of the granite, or the situation and dimensions of the wharf, or the quantity of stone the decked gondolas could carry, or the charges of transportation, or the prices of stone in Portsmouth; how do you know the drills in the '*new*, *large* and *commodious*' blacksmith's shop, were 'made entirely of steel;' how did you judge of their composition; what test or experiment did you subject them to; who called your attention to them and their composition; can you now recollect how many, or about how many, there were of those drills 'made entirely of steel;' did you suppose you was communicating any information new to 'Dr. Joseph J. Fales,' when you reported to him upon the matters herein referred to, or upon the situation of said ledge, with reference to 'the meeting house in Durham,' and other similar matters which make up a large part of your said report? If you did not so suppose, why did you go into these particulars either as 'chemist and geologist,' or otherwise; did these matters come within 'the instructions,' in accordance with which you visited the ledge?

Answer. I did subscribe said report as 'chemist and geologist;' I did not in the character of chemist and geologist, or either of them, report as to the condition of the house, or the garden, or fruit trees, or on the size and age of the barn, or the blacksmith's shop, excepting in so far as the latter is connected with the quarry, in furnishing and repairing tools; the quantity of tools, and the facilities of transportation of granite, the situation and dimensions of the wharf, and the quantity of stone decked gondolas could carry, the charges of transportation, and the prices of stone in Portsmouth, are all connected with the practical examination of the quarry; I saw the drills, and knew them to be made of steel by the eye, and because I used some of them myself in splitting the rock; the superintendent called my attention to them, and to their composition; it is easy to distinguish a drill with a steel point welded to it, from one made entirely of steel; I do not remember how many drills there were made entirely of steel; in relation to the residue of this interrogatory, I answer, that I did not know how far Fales was informed upon the subjects therein enquired of, and supposed there

were others interested with him; I, therefore, gave a full description thereof, for the information of all concerned; I had no other instruction than to examine the ledge and make a report thereof.

25th cross interrogatory. Are you accustomed to read the reports of the proceedings of 'the Association of American Geologists and Naturalists,' and of the 'British Association for the advancement of Science;' do you or not know that it has been a subject of regret and reproach in those societies, that men of science should lend themselves to speculative schemes and bubbles? If you have the report of the last session (May, 1844,) of the said first mentioned society, will you refer to remarks of the chairman thereof, wherein he 'cautions the members against allowing the influence of their characters to be improperly used in mining and other speculations,' and say whether you think such caution timely and deserved?

Answer. I am accustomed to read the reports of the proceedings of 'the Association of American Geologists and Naturalists,' of which I am a member, and also of the 'British Association for the Advancement of science;' we all agree that scientific men should not lend themselves to speculative schemes and bubbles; and, so far as I know, no member of our association has ever done it; I have the report of May, 1844, referred to in this question, in which Dr. Loke, the chairman, made the remark quoted; the caution is perfectly proper, and one to which we all respond; I know of no instance in which any member of this association has ever misled the public; geologists are frequently called upon, both in Europe and in this country, to examine mines and quarries, and to report upon the same; it is a practical department of science, highly important and valuable to the community.

CHARLES T. JACKSON.

Paper annexed to the 2d direct interrogatory.

JOHN J. CLARKE,
Commissioner.

Dr. Jackson's report.

BOSTON, *July* 16, 1836.

DR. JOSEPH J. FALES,

DEAR SIR: In accordance with the instructions which I received from you, I visited the Cleft Ledge Granite quarry in Durham, on the 14th and 15th instants, and now am enabled to offer you a report on the nature and value of the locality. The Cleft Ledge Granite quarry is situated about half mile north of the meeting house in Durham, and 45 rods north from Oyster river, and belongs to a tract of land having an area of about 60 acres. The situation of the ledge is favorable, it being on rising ground, so that the quarry can be easily drained to the depth of at least forty feet. It is near to the river, so that the stones may be carried down a gentle slope to the wharf. As to the first of your questions, *is there enough?* I reply, that the locality will furnish an abundance of granite, and that its extent is very great in every direction. As to the depth of the formation,

I would remark that no one has ever penetrated below granite, and that its depth is *immeasurably* great. The quantity of rock which can be got out is sufficient for every purpose. The rising ground to the N. E. and to the N. W. of the quarry is granite, and the whole farm is founded on that rock. The ledge I traced above the surface in numerous places to the wood N. E. of the quarry. As to the *quality* of the stone, I would observe, that it is excellent for building stone. It consists of quartz, feldspar, and black mica, duly intermixed, forming an elegant dark granite. Its weathered surface shows that it is capable of resisting the action of air and moisture. I examined some hammered stones from the ledge that had been exposed to the weather for twelve years, and they had not been discolored, and looked quite handsome; so I feel very confident that the rock will withstand the action of the weather. Respecting the facilities of *quarrying* and *transportation*, I reply that they are *uncommonly favorable*. The rock is naturally divided into large sheets, which have the appearance of stratification, but are not *really stratified in texture*. The large tabular masses are arranged in regular layers, which run N. N. E. and S. S. W., and dip to the W. S. W. 50 degrees. The layers are frequently regular and even, and vary in thickness from a few inches to three feet. Building stones two feet square and twenty-two feet long, have been quarried at this place, and are now to be seen on the spot. The average thickness of the stones will not exceed one foot. But they may be obtained of any width and length desirable. One perfect sheet of stone was quarried while I was at the locality, which measured five feet by eight feet square, and seven inches in thickness, and I have no doubt an abundance of slabs may be obtained *ten feet square, and eight inches in thickness*. Such stones are very valuable for platforms, flagging stones, steps, &c., &c., and will readily sell in the market. *Their natural faces are perfectly smooth and fresh, so that much labor will be saved in hammering them*. You cannot expect to obtain very large blocks of granite from this quarry, but you may obtain an abundance of good sized stones for buildings. As there are natural clefts in the ledge, there is no occasion to use gunpowder in the quarrying, unless it be for the purpose of clearing away useless stone, in order to obtain room to work. The facilities for transportation are as follows: The ledge is 45 rods from the channel at high water. The quarry is above the level of the wharf, and has a road descending by a gentle slope to the river; the wharf is 136 feet long, 50 feet wide, and 6 feet high above the bottom. It rests on the flat two feet above low water mark. The average tide at the place is seven feet rise, and high tides rise to eight feet, on a level with the cap logs of the wharf. A gondola can lie beside the wharf and take on board the stone. The decked gondolas carry about 30 tons, and the expense of transportation to Portsmouth is from ten to twelve dollars per load in the gondolas. It can be delivered on board the sloops, one mile down the river, for about six dollars per thirty tons. Price of the stone sold in Portsmouth, is from ten to twenty cents per cubic foot in its rough state, and from thirty-seven and a half to fifty cents when hammered. On the

estate is a house, barn, and blacksmith's shop. The house is in good order, and has a little garden with fruit trees. The barn is old, but large. The blacksmith's shop is *new*, *large*, and *commodious;* has three forges, two of which are in operation. Chisels, drills, splitting tools, &c., are made in this shop, and there are now on hand sufficient to supply about 50 or 60 men. The drills are made entirely of steel. In conclusion I would state, that in my opinion the Cleft Ledge Quarry is valuable, especially for supplying slab-stones and building stones for dwelling houses; and that the stone, either in its natural or hammered state, is a beautiful and durable granite. Although the rock will become more solid as you descend, I do not think you will be able to obtain large blocks or columns such as are required for great public buildings. For ordinary architecture, you can obtain such as are required, provided the diameter is not wanted to exceed eighteen inches. The sizes commonly required for building, are not more than a foot square, and such you can obtain in abundance. The depth to which you can work will depend on the demand for, and price of the stone, compared with the expense of labor.

Your ob't serv't,

CHARLES T. JACKSON, M. D.,
Chemist and Geologist.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this sixteenth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Charles T. Jackson to come before [me,] in Roxbury, in the county of Norfolk, in said district; and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence, and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE,
Commissioner.

I, Newell A. Thompson, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, esquire, of the age of about 36 years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age and occupation, and where do you reside?

Answer. I reside in Boston, and am an auctioneer.

2d interrogatory. When was you first connected with the Cleft Ledge Granite quarry; who owned it then? Had it been tested and

worked then; did you or not, with other associates and who, buy said quarry? What did you give for it, and on what time did you buy it; what were the facilities for working and transporting the granite when you bought it?

Answer. In the year 1835 or 1836, but am not able to say which year, or about that time, I was first connected with the Cleft Ledge Granite quarry. My two brothers, George C. Thompson, James M. Thompson, Joseph J. Fales, and I purchased said quarry and the farm connected with it, of a man by the name of Pendexter, about that time. It had not been worked then, nor do I believe it had then been tested, except by personal examination by some of the parties interested in the purchase; I am not able to say what we gave for it; we bought it as a farm, without reference to it as a quarry; *we* knew that there was a quarry on it, and bought it in reference to the quarry, supposing it to be valuable for that purpose, but the owner fixed its value in reference to it as a farm, but not as a quarry, as I believe; we paid cash, in part, for the purchase, and gave a mortgage for the residue; how much cash, and how much mortgage, I do not recollect; neither do I remember on what time we bought it. For my answer to that part of the question as relates to the time of the purchase, the consideration thereof, and the time on which we purchased, I refer to the deed and mortgage, recorded in Dover, New Hampshire. The ledge was situated on or near the bank of one of the branches of the Piscataqua river, navigable for sloops and small craft, such as are usually used for transporting granite; there was no facilities for working the granite at that time; the quarry was not then opened; and no road was built to it, nor any wharf.

3d interrogatory. What did you find the quality of the granite to be; what did you do to test its quality?

Answer. The granite appeared to be of excellent quality; we employed Dr. Charles T. Jackson to examine it; which he did, and made a report to us; and I think we also employed a stone mason, or stone cutter, to get out and hammer a piece of it, and bring [it] to Boston.

4th interrogatory. What improvements did you make in and about the quarry; what expense did you sustain in making these improvements?

Answer. I do not remember that we made any improvements in or about the quarry until the company was formed, and a sale of it was effected to said company.

5th interrogatory. How long after you bought the quarry before you sold to the Cleft Ledge Granite Company?

Answer. I do not remember.

6th interrogatory. Had you or not entered into any contracts for supplying granite before you sold, or had you or not any contracts under negotiation?

Answer. Not to my recollection.

7th interrogatory. Was there or not any improvements in the price of granite quarries, and of granite, between the time you bought and the time you sold?

Answer. I am unable to answer the question.

8th interrogatory. Give a history of the formation of the Cleft Ledge Granite Company. What was it got up for? Who got it up? Was it or was it not got up for swindling operations? Was it or not got up for honest purposes, and to organize an efficient company for the permanent quarrying of granite? What were the prospects of the company when it was organized? Where did the corporators reside? What were their standing and ability at that time to carry forward such a company?

Answer. The Cleft Ledge Granite Company was formed by those of us who first purchased, and others, by obtaining an act of incorporation in the State of New Hampshire; it was got up for the purpose of working the quarry; it was not got up for swindling operations, but for the purpose of getting out granite and selling the same, in perfect good faith, supposing that by so doing we could make a large sum of money; it was got up for honest purposes, and to organize an efficient company for the permanent quarrying of granite, so far as I was concerned, and so far as I know and believe, were the views of the others interested therein; the prospects of the company when organized were good in our own estimation, or we should not have undertaken it; the corporators, for the most part, resided in Boston; their standing and ability, at that time, to carry forward such a company was, in the opinion of the corporators, equal to that of other similar corporations that were established on or about the same time; the business would not have been undertaken, as I believe, unless the corporators had supposed themselves of sufficient ability to carry it on.

9th interrogatory. How did the price for which you sold said quarry compare with the price which other quarries, combining similar advantages, were bringing at that time? Was or not the price paid by the company a fair one, as compared with the sales of granite quarries generally? Were or not the terms of credit the usual terms given in such cases?

Answer. To the best of my belief, the quarry was sold by us at a fair price, as compared with other quarries combining similar advantages, which were sold about the same time; and the terms of sale, or credit, were the usual terms given in such cases.

10th interrogatory. Give a history of the doings of said Cleft Ledge Granite Company. How often they held their meetings? What efforts were made to obtain contracts? What to place the company on a firm footing and to make it profitable?

Answer. I am unable to answer this interrogatory; so long a time has elapsed, that the whole matter has to a great degree passed from my mind.

11th interrogatory. Was or not any money raised on the individual responsibility of the members for the use of the company? What improvements were made by the company? What contracts were obtained? Was it usual or unusual then or now for the original owners of quarries, lumber tracts, manufacturing sites, &c., to become members of the companies that bought them out?

194

Answer. I am unable to answer the first part of this interrogatory. The company built a wharf, and a road from the quarry to the wharf, and purchased a piece of land for that purpose, and built a blacksmith's shop; I do not know what contracts were obtained; I had nothing to do with that part of the business; I am unable to answer the remainder of the interrogatory.

12th interrogatory. How did the company expect to pay the $52,000 that they run in debt for the quarry? Was it or not by sale of the stock?

Answer. I do not remember the sum that the company run in debt for the quarry; if I remember rightly, the quarry was paid for in stock; and I do not remember that the company run in debt at all for the quarry.

13th interrogatory. Was or was not the stock paid for in something when sold? State how that was.

Answer. I cannot answer this question, I do not remember.

14th interrogatory. Was then usual or otherwise for companies to run in debt for their quarry or other property upon sales for their stock to pay off the debt? Was it then, and is it now, usual or unusual for companies to commence operations before one-half of their stock was taken up?

Answer. I cannot answer this question.

15th interrogatory. Was or not the Cleft Ledge Co. in successful operation in the fall of 1836? Was or not the prospect for the sale of granite good?

Answer. At one time the Cleft Ledge Co. was in operation—with what success I am unable to answer; and I think it was at or about the fall of 1836, we believed the prospect for the sale of granite was good.

16th interrogatory. State fully and particularly what the prospects of said company were in the fall of 1836, and what contracts the Co. had, or expected to get.

Answer. I cannot, I have no means of information.

17th interrogatory. Had or not the company an agent at that time, and a clerk, and workmen, and how many; and were they or not getting out stone *I* was or not granite then high; what was the price of granite then?

Answer. I think the company had an agent, and a clerk, and workmen, that were getting out stone, but I am unable to state how many workmen; I do not know whether or not granite was then high, nor the price of granite at that time.

18th interrogatory. Is or not quarrying suspended during the winter months?

Answer. Yes.

19th interrogatory. What revulsions in business, if any, took place in 1837; how did it affect the price of granite; what effect did it on your operations?

Answer. There was a great revulsion in business in 1837; speculations of all sorts were knocked in the head; I do not know how it affected the price of granite; I am of opinion that I had parted with my

stock in said company before that time; and do not remember whether this company suspended operation, but believe they did, as all operations of similar corporations were obliged to suspend, or corporations similarly situated.

20th interrogatory. When did you learn about the quarry, as to its being able to get large stones; what effect did it have on your contracts; on your expectations of profit from the company; when did you learn this; was it or not late in the fall or early in the winter?

Answer. I derived nearly all of my information about the quarry from the report of Dr. Jackson; when this report was made I do not remember; I knew very well of it from my own knowledge; to the remainder of this question I am unable to make answer.

21st interrogatory. How did the state of the times affect other granite quarries and other property in general?

Answer. It caused great depression in business of all kinds, and depreciation of property of all kinds.

22d interrogatory. Did or not Samuel Warner ever apply to you for information about the said company and about the said stock; if yea, when was it; where was it; what inquiries did he make; did you give him all the information in your power; was the same true, as far as you know?

Answer. I do not know Samuel Warner; he may have called on me for information, and I not have known him, or if I ever knew or saw him, or he ever made enquiries about it, I have forgotten it; if such a person called on me, at any time, I have no doubt that I gave true answers to such enquiries as he made of me.

23d interrogatory. Did you or not know all about the formation and organization of the company and all its doings; *was* you or not willing to communicate freely to him all you knew about the company?

Answer. I must have known all about the formation and organization of the company, as I was one of the projectors, as also of all its doings at that time, as the records were open to me, and I think I was one of the directors; I certainly should have been willing to communicate freely to said Warner all that I knew about the company, if he had called on me; I know of no reason why I should have withheld any information that was in my power to communicate.

24th interrogatory. Did you communicate to him freely all the facts in your knowledge about said company; the quality of the granite; the extent of the quarry; the value of the stock; the prospects of the company, &c., &c.? State what you did communicate.

Answer. My answers to the two former interrogatories immediately preceding this will be my answer to this.

25th interrogatory. Did Warner call on you more than once, and how often?

Answer. I have no recollection of his calling on me at all.

26th interrogatory. Was he ever at any of your meetings?

Answer. I do not remember.

27th interrogatory. Were or not all granite stocks then known and

considered to be fancy stocks? Did Warner know this?

Answer. All those kinds of stock were usually termed fancy stocks; I cannot say whether or not Warner knew this.

28th interrogatory. Was or not said stock ever sold by the company under par?

Answer. I do not know.

29th interrogatory. Were or not any sales made of it at par?

Answer. Frequent sales were effected of the stock, but I am unable to say at what prices.

30th interrogatory. If the times had continued as prosperous after 1836 as at that time, would the company continued to operate?

Answer. I have no doubt they would.

31st interrogatory. State any other facts material to the issue in the case, that are within your own knowledge.

Answer. I know of no other fact material to the issue in this case.

Cross interrogatories proposed by Jonathan P. Bishop, solicitor of plaintiff.

The plaintiff objects to the testimony of N. A. Thompson and the interrogatories propounded to him by defendants as irrelevant.

1st cross interrogatory. What do you mean by "the Cleft Ledge Granite quarry?"

Answer. Certain persons with myself purchased a farm and granite quarry in Durham, in the State of New Hamshire, which subsequently took the name of the Cleft Ledge Granite quarry, from the name of the corporation which subsequently owned it, and was called the Cleft Ledge Granite Company; it was known by no particular name at the time of the original purchase.

2d cross interrogatory. Did you with any other persons buy a quarry at any time which was called by that name you bought it?

Answer. It was not called by any particular name at the time we bought it.

3d cross interrogatory. When did the place acquire that name; and from what circumstance was it more entitled to it than any other similar piece of real estate?

Answer. It acquired the name at the time the act of incorporation was passed; and I don't know why it was more entitled to that name than any other similar piece of real estate; but that name was given to it by the fancy of the persons interested in it, and because the stone lay in clefts or layers.

4th cross interrogatory. If you and others bought any piece of real estate which you and they afterwards called by that name, had said place any particular name by which it was distinguished from the rest of the farm on which it was situated and formed a part before you bought it? If yea, what was it?

Answer. No, not to my knowledge.

5th cross interrogatory. Was or not what you bought a farm in Durham, New Hampshire, called the 'Leather's Farm?' What, in your

present opinion, was the actual and intrinsic value of said farm at the time you bought?

Answer. What we bought was a farm in Durham, New Hampshire; whether called the Leather's farm, or not, I don't know; I have no opinion now of the actual and intrinsic value of said farm at the time we bought it, and cannot answer that branch of the question; except that its intrinsic value as a farm was about the price we paid for it; I have no doubt, but I do not recollect the price we paid for it; and I have no doubt that it was worth a great deal more for a granite quarry, as the price of similar property, or quarries, was at that time, it was without doubt worth all the company paid for it; but I do not recollect what sum was paid for it.

6th cross interrogatory. To whom did you and others sell said 'Leather's Farm,' and for how much; and how paid; and how to be paid?

Answer. We sold the farm which I have mentioned to a corporation called the Cleft Ledge Granite Company; but as to the price, terms of payment, &c., I am unable to state.

7th cross interrogatory. If you sold it to a corporation, who were the members of said corporation at that time? What corporation was it?

Answer. It was the Cleft Ledge Granite Company; I do not remember who were the members of said corporation, other than Joseph J. Fales, George C. Thompson, James M. Thompson, and myself, at the time enquired of.

8th cross interrogatory. Where was this corporation situated? Where did its members reside?

Answer. The corporation derived its charter from the Legislature of the State of New Hampshire; I do not know how I can otherwise answer this question; its members principally were residents in Boston, as I think.

9th cross interrogatory. Who acted on the part of the corporation in making the contract of sale and purchase from you and your associates to it?

Answer. I do not remember.

10th cross interrogatory. Was there a vote authorizing any one to act in the matter for said corporation?

Answer. I do not remember.

11th cross interrogatory. What, in your opinion, is the value of said farm and ledge at this day?

Answer. I can give no opinion of the value of said farm and ledge now; I have not been there or known any thing about it for many years.

12th cross interrogatory. Of whom did you and your associates buy said farm? What did you give for it?

Answer. We bought it of a man by the name of Pendexter; I do not remember what we gave for it.

13th cross interrogatory. Had you or not ever seen any of the rock

from said farm in Boston, before you and your associates bought said farm?

Answer. I cannot remember.

14th cross interrogatory. Will you describe that part of the 'Leather's Farm' which you call the Cleft Ledge Granite quarry, at the time you bought it?

Answer. I cannot.

15th cross interrogatory. Have you ever seen said quarry? If yea, where for the first time? Will you give the superficial area as near as you can at the time you bought it?

Answer. I have seen the quarry; for the first time, a short time previous to the purchase; I cannot give the superficial area.

16th cross interrogatory. What should you say was the summit height of the quarry above the level of the surrounding plain and mowing land, at the time you bought it?

Answer. I cannot answer this question.

17th cross interrogatory. What part of said 'Leather's Farm' was your share after the purchase of you and your associates?

Answer. I think one quarter part belonged to me, when we purchased of Pendexter.

18th cross interrogatory. Did or not you and two of your brothers and Joseph J. Fales purchase said 'Leather's Farm' together, and each own one-quarter undivided, subject to a mortgage to a Mr. Pendexter, of whom you bought it for $2,500.

Answer. My two brothers and Joseph J. Fales and myself did purchase the farm, which I have before mentioned, together, and each owned one-quarter part of it undivided, and we mortgaged it back to Pendexter, to secure a part of the purchase money, of whom we bought it; I do not recollect how much we gave for it, nor the sum for which we mortgaged it.

19th cross interrogatory. Were you or not a partner of J. J. Fales at the time, in some other business? If so, what?

Answer. No.

20th cross interrogatory. Would you or not have given your associates as much for their shares of said farm as they got of said corporation?

Answer. I do not think I should; I was a seller rather than a buyer.

21st cross interrogatory. Did or not said corporation give you and your associates notes and a mortgage to the amount of $53,000 for your right of redemption of said farm, and for which you and your associates paid $2,000; said corporation assuming to pay the $2,500 mortgage then upon the plan?

Answer. I have no means of answering this interrogatory at this time.

22d cross interrogatory. How much money did you and your associates expend upon the 'Leather's Farm' before you sold it to the corporation?

Answer. I cannot tell.

23d cross interrogatory. What was done by you to occasion that expense? State all improvements made to your own knowledge, and the payments of expenditures within your knowledge.

Answer. I have before stated all the improvements made by us on said farm, but if I remember rightly we made no improvements before the sale to the corporation.

24th cross interrogatory. May 20, 1845. Do you or not know of your own knowledge that any improvements were made by you and your associates? If so, how do you know it?

Answer. I find on reference to my papers that the improvements that were made, were made by the original purchaser prior to the sale to the company; I know this because I was there, and paid a proportion of the expenses of opening the ledge. I think I have stated in a former answer that the improvements were made by the company; this answer was made on the 15th instant; since then, upon reflection, and upon recurring to some papers in my possession, I find that what improvements were made, were made before the formation of the company. I also wish to correct a former answer wherein I have stated that the company paid for the quarry in stock; whereas, in fact, the company paid for said quarry by their promissory notes, dated August 25, 1835, signed by George Odiorne, president, and Peter Harvey, treasurer.

25th cross interrogatory. What was your business in 1835 and 1836, say from the time you bought said 'Leather's Farm' to the time you sold it to said corporation. Where did you do said business? Who with?

Answer. I was in the office of Messrs. Heard & Aylwin, at and during the time referred to in this interrogatory, as a student and a clerk; their office was in court street, Boston; but my principal business was speculating in lands, quarries, &c., in the same manner as very many others were during that period.

26th cross interrogatory. During which time, how many times were you at Durham, N. H.? Will you state each and every time?

Answer. I cannot remember how many times; once or twice.

27th cross interrogatory. How many rods of roads were made by you and your associates from said quarry to the public *road* below the quarry?

Answer. I do not know.

28th cross interrogatory. Was said road very expensive; of trifling expense; or of no additional expense to you to make it, to what you would have had in opening the quarry without making it?

Answer. The road was expensive; and it was an expense additional to the expense of opening the quarry.

29th cross interrogatory. If said road is made by an embankment of earth upon the surface of the natural soil, how high is this embankment in the centre of said road from said surface?

Answer. I cannot say; so much time has elapsed that I have no distinct recollection about it.

30th cross interrogatory. How wide is said embankment?

Answer. I do not know.

31st cross interrogatory. Of what was this embankment made?

Answer. I do not know.

32d cross interrogatory. Will you, from your answers to 27, 29 and 30, now say how many squares (216 cubic feet each) said embankment contained of the material you say it was made?

Answer. I cannot.

33d cross interrogatory. From what place were these materials obtained for this embankment?

Answer. If an embankment was made, I have no doubt that the materials were obtained from the quarry; but I am unable to say.

34th cross interrogatory. Was or not the whole of said embankment taken from the quarry in the operation of uncovering the rock of dirt, &c?

Answer. I do not remember.

35th cross interrogatory. Where could you have hauled this dirt from the quarry with so much ease as where you did, even if the road had not been needed?

Answer. I cannot answer this question.

36th cross interrogatory. Then what additional expense do you now say the road was to you?

Answer. I have no means of answering this question.

37th cross interrogatory. Was any of the dirt, gravel, and small rocks carted elsewhere than upon said piece of road? If yea, where?

Answer. I don't know.

38th cross interrogatory. If all the dirt, gravel, and chips taken from the quarry were carried upon the said piece of road, how would the number of squares contained in the embankment compare with the number in the excavation in the quarry?

Answer. I don't know.

39th cross interrogatory. What proportion of the excavation in the ledge, which was carried upon the road, was rock, and what dirt or gravel?

Answer. I don't know.

40th cross interrogatory. What other improvements did you and your associates make upon said 'Leather's Farm' than making said road and uncovering said ledge?

Answer. There was a wharf and blacksmith's shop built, and forges in said shop; I do not remember what other improvements were made.

41st cross interrogatory. What buildings before you sold did you erect (if any) upon said 'Leather's Farm?' Will you state particularly their size upon the ground, height, and how built and covered? Whether shingled or clapboarded? Whether they had sills, or of poles stuck in the ground? Whether they or any of them had floors, or any thing of finish, more than a rough frame and enclosing boards? What should you consider cost of the said buildings that you erected before you sold to the corporation?

Answer. I do not remember that any buildings were erected before the sale to the company, except the blacksmith's shop before mention-

ed; its size and height I cannot remember. I think it was a framed building, boarded and shingled; whether clapboarded or not I do not remember; it had sills; it was in every respect, according to my recollection, a substantially built shop, such as is usually built in the country for a blacksmith's shop. I do not remember the cost; and I have no opinion of the cost of it, and can form no judgment.

42d cross interrogatory. Was there or not any other expensive improvement made by you and your associates, before you sold to said corporation? If yea, please state particularly and fully.

Answer. There was a wharf built, that cost from three to four hundred dollars. I do not recollect any other improvement that cost any considerable sum.

43d cross interrogatory. Had said corporation or not, at the time you sold said farm to it, any seal?

Answer. I do not remember, but have no doubt it had.

44th cross interrogatory. Was or not said seal (if said corporation had any) affixed to the dealings between it and you and your associates?

Answer. I do not remember; neither do I remember any dealings between me and my associates, and said corporation, that would require the use of a seal, if the said corporation had a seal.

45th cross interrogatory. Was there or not any vote of said corporation to purchase said farm? If yea, what members were present when such vote was passed? How many, and who were they besides you and your two brothers, and Dr. Joseph J. Fales?

Answer. I do not remember.

46th cross interrogatory. What previous notice of said meeting, and of business so important and interesting to all the members, was given of the object and calling of said meeting?

Answer. I do not remember.

47th cross interrogatory. Where was said meeting held? In what building?

Answer. I do not know.

48th cross interrogatory. Was there or not any thing remarkable in what you call Cleft Ledge Granite quarry; or did it possess any advantages over other knolls and hillocks in and around Durham, to entitle it to a greater price? If yea, in what was it peculiar?

Answer. It was deemed remarkable and peculiar, in that it was supposed it would yield an abundant supply of granite, of good quality, which could be easily worked and got to market.

49th cross interrogatory. Did or not a Mr. Pendexter, previous to your purchase of said farm, exhibit a piece of granite in Boston from said ledge?

Answer. I do not remember.

50th cross interrogatory. Did or not you and your associates thoroughly examine said piece of granite? Did or not Dr. Charles T. Jackson examine it? Did you or not obtain, from practical stone workers, or others, any opinions concerning the quality of said granite, before you made the purchase? If yea, whose opinions?

Answer. I do not remember; all may have been done, and I have forgotten it.

51st cross interrogatory. What was the general opinion concerning said piece of granite, among practical stone workers and builders in Boston?

Answer. I do not remember; there was at one time a piece of the granite from this ledge, in my possession in Boston, whether before or after the sale I do not know; and this piece of granite was shown to many persons, and was considered to be of excellent quality.

52d cross interrogatory. How long after you saw said piece of granite in Boston, before you and others purchased 'the Leather's farm?'

Answer. I do not remember whether I had this piece of granite before or not, till after the purchase of said farm.

53d cross interrogatory. In the mean time, between your examination of said piece of granite and purchase of said farm, did Dr. Charles T. Jackson go to Durham to examine said farm?

Answer. I heard that Dr. Jackson went to Durham to examine the ledge, but I do not know at what time he went there.

54th cross interrogatory. When did Dr. Jackson examine said farm, before or after your act of incorporation? Before or after you and others had conveyed said farm to yourselves as a corporation?

Answer. I do not know.

55th cross interrogatory. Who paid Dr. Jackson for his examination of said farm; you and others, or said corporation?

Answer. To the best of my knowledge and belief, Dr. Jackson was paid by Dr. Fales, for, and in behalf of, the associates.

56th cross interrogatory. What sum was paid him?

Answer. I do not remember.

57th cross interrogatory. How many days, weeks, or months, was he performing the service?

Answer. I do not know.

58th cross interrogatory. In what manner did Dr. Jackson examine said ledge; by walking across it, or otherwise? If otherwise, how?

Answer. I was not with him, and do not know.

59th cross interrogatory. What object had you in getting Dr. Jackson to go out to Durham and perform that service upon said ledge?

Answer. It was at the suggestion of Dr. Fales, because Dr. Jackson was a practical geologist, and his opinions upon the subject would be valuable.

60th cross interrogatory. Had you or not doubts as to the rock being granite?

Answer. Never.

61st cross interrogatory. Were you or not satisfied as to its quality, when you examined the piece of granite in Boston?

Answer. So far as I was concerned, I felt confident that it was of good quality; and was satisfied of this in my own mind.

62d cross interrogatory. What object had you and others in view, in having Dr. Jackson examine said farm?

Answer. I have answered this question in my answer to the 59th cross interrogatory.

63d cross interrogatory. Did you or not know that there were a number of first rate judges of granite and farms in the town of Durham, who have followed the granite business there for more than twenty years, that could, and would willingly give you, free of expense, any information concerning said ledge and farm you might ask for?

Answer. I did not.

64th cross interrogatory. Did you or not know there were practical operators in granite in Durham?

Answer. No.

65th cross interrogatory. Did or not you know that Dea. Daniel Matthews, and Valentine Matthews, esq., had followed the granite business in Durham, from 30 to 50 years; that they were men of high standing in the community, and understood more about the value of granite in Durham, and had more practical knowledge upon the subject, than all the theoretical geologists in the State?

Answer. I do not remember that I ever knew or heard of Dea. Daniel Matthews or Valentine Matthews, esq.

66th cross interrogatory. Did you or not know that the corporation aforesaid, could have bought either or all of more than a dozen ledges, already opened and tested, with greater facilities, and better granite, and every way more valuable, for one-twentieth part of the money they were to give you?

Answer. No.

67th cross interrogatory. Did you verily believe said 'Leather's farm,' with what you had done to the ledge, &c., was worth $53,000 when you sold it to the corporation?

Answer. I did believe it was as well worth that sum as other property that had a speculative value was worth what it was then selling for; I did fully believe then that it was worth that sum.

68th cross interrogatory. Will you now give $2,500 for said farm and quarry, payable on the same credit as said corporation was to pay you? If you will not, what are your reasons?

Answer. No; because I do not wish to purchase, and because the year 1845 is not the year 1836.

69th cross interrogatory. What discoveries did the Doctor make in his examination, and what did he communicate to you that you could not have seen by examining the ledge yourself?

Answer. I do not know; I did not go into a particular examination, and do not feel competent to do so.

70th cross interrogatory. Did the Doctor or not inform you the rock was such that it would not answer for government, or any other contracts that required common sized stones; that it was fit for nothing but cellar rock, and the like?

Answer. All I know of Dr. Jackson's opinions, is contained in his printed letter to Dr. Fales; I have never had any conversation or communication with Dr. Jackson upon the subject.

71st cross interrogatory. Is it or not a fact which materially affects the value of said granite quarry, that the rock is not capable of being wrought into large work?

Answer. I do not know.

72d cross interrogatory. Did you or not have to give up contracts which you had made for rock for building, and which contracts would have been an object for any granite workers to have held on to, solely because the rock at said quarry was full of such seams, and came out in such clefts and thin layers, as not to admit of being wrought into work requiring large stone?

Answer. I know nothing about it.

73d cross interrogatory. Did or not you and your associates know this fact when you bought the 'Leather's farm?'

Answer. No, not to my knowledge.

74th cross interrogatory. Had you known it, would you or not have been likely to have given as much for it as you did?

Answer. We should not have been likely to have purchased the quarry at all, had we known that any of the objections stated had existed against it.

75th cross interrogatory. Had you known it, would you or not been likely to have laid out any money upon said ledge?

Answer. I think not.

76th cross interrogatory. Do you or not now consider said ledge, independent of the rest of the farm, worth what you laid out upon it?

Answer. I have no opinion of the value of the ledge at the present time.

77th cross interrogatory. When did you and your associates first discover that large rock could not be obtained at your quarry? Did you or not then ascertain that Dr. Jackson was mistaken in saying that the *rock* of said quarry, and the sheets of rock, were 'not really *stratified in texture*?'

Answer. I have no recollection upon the subject.

78th cross interrogatory. Was it or not after Dr. Jackson had made his examination, that you made the discovery referred to in the 20th direct interrogatory?

Answer. I have no recollection upon the subject.

79th cross interrogatory. Did he or not make any certificate or report of the fact, that nothing but small rock could be got from this ledge?

Answer. I have no recollection upon the subject. I have a printed letter to Dr. Fales, wherein he makes such a statement.

80th cross interrogatory. Did he or not discover, or had you or not before discovered, the seams in the rock, which would not admit of thick layers being taken out of the quarry?

Answer. I do not know.

81st cross interrogatory. Did or not you or your associates know, before you bought the 'Leather's farm,' or before you sold it to said corporation; or have you or not since learned that said quarry was very hard to work; more so than other quarries in the town?

Answer. No.

82d cross interrogatory. Have you or not long since learned, (if you ever thought otherwise,) that instead of said quarry increasing the value of said farm, so as to make it worth $55,500, that said quarry is of less value per acre than the surrounding plough fields?

Answer. No.

83d cross interrogatory. Had you known at the time you sold said farm to said corporation, what you have since learned about said rock, should you or not have been willing to demand and receive of it $53,000 for your equity of redemption, and leave them to pay $2,500 more to Pendexter, making $55,500 for said farm?

Answer. I should not have been willing to have sold the farm for the price he did, unless I had supposed it to be worth the price it was sold for. I have not since learned any thing about it. My belief is, that it is not worth the price it was sold for.

84th cross interrogatory. Would you or not, with the knowledge you now have of said ledge, or even had at the time you sold, as one of the corporators, voted to give Daniel Matthews one tenth part of $55,500 for his farm and quarry?

Answer. I know nothing about Daniel Matthews' farm and quarry.

85th cross interrogatory. Who paid for the printing of Doctor Jackson's report concerning said ledge? Where was the same printed? About how many copies had you struck off?

Answer. I have no recollection upon the subject.

86th cross interrogatory. Did you or not have a printed estimate of the cost and probable profit of working said quarry; or something that purported to be such an estimate? When was it printed?

Answer. I have no recollection upon the subject.

87th cross interrogatory. Who paid for printing this estimate? Where was the same printed? About how many copies of this estimate had you struck off? If you have one of those estimates will you annex it?

Answer. I have no recollection upon the subject, and have not a copy of such an estimate.

88th cross interrogatory. Did you or not have the charter and by-laws of the corporation also printed? Who paid for printing them? Where were they printed? How many copies had you struck off of them?

Answer. I do not remember.

89th cross interrogatory. Was or not the whole of this printing done at the same time; in the same office; contracted for all at once; and made out in one bill; by one and the same concern; and was it not all done for carrying forwards one object, and that alone? What was that object?

Answer. I do not remember.

90th cross interrogatory. Who drew up Dr. Jackson's report? Who assisted him in his examination? Who was with him, and saw him do it? Have or not you since found every thing true with respect to said farm and ledge as told by said Jackson?

Answer. I do not know.

91st cross interrogatory. Were there not many material facts necessary to be known to enable one to form a correct estimate of the value of said farm that were not reported by the Dr.

Answer. Not to my knowledge.

92d cross interrogatory. What was the object you had in view when you got up the report and estimates? Was it or not to induce said corporation to buy your said farm at $55,500, or was it not to enable the shareholders to sell out stock in the company?

Answer. I have no recollection of getting any estimates; the object of getting the report was to facilitate the getting subscribers to the stock.

93d cross interrogatory. Who paid for the printing the certificates of stock; where were they printed; how many had you struck off; were they not all printed at the same time with the Dr.'s report, estimates, charter, by-laws, &c.? Annex a copy of one of said certificates as originally printed, and as afterwards altered by a pen.

Answer. I do not know; I have no such copy as I am asked to annex.

94th cross interrogatory. What was the whole expense of paying Dr. Jackson and doing all the printing before mentioned, applying to the Legislature for and obtaining said charter—all the expense which was necessary for any purpose except the sale of stock?

Answer. I do not know.

95th cross interrogatory. What act, if any, did those who applied to the Legislature of New Hampshire for said charter do, after they had obtained it, to accept of the same?

Answer. I do not remember, but presume that they voted to accept the charter; the records will shew.

96th cross interrogatory. Who started the plan of purchasing said farm?

Answer. I believe Dr. Fales or my brother; but I do not remember—I did not myself.

97th cross interrogatory. Was or not the idea of getting incorporated and making the farm into stock, &c., as was done, a part of the first suggestion about buying said farm?

Answer. I do not remember distinctly, but my impresssion is that nothing was thought about an act of incorporation at the time of the purchase by us.

98th cross interrogatory. Did you or your associates or not, when negotiating for said farm, ever calculate to operate upon said farm and ledge in the way of getting out rock on your own account, with an expectation and belief that you could make money by so doing?

Answer. We purchased on speculation for the purpose of making money; I have now no distinct recollection what our plans were originally to attain this end.

99th cross interrogatory. Had you or not in view, when you bought said farm, to do as you had heard of others doing—viz., to purchase, get an act of incorporation, &c., precisely as you did do afterwards?

Answer. I answer as I have to the last interrogatory.

100th cross interrogatory. Who signed the petition to the Legislature of N. Hampshire, for the act of incorporation?

Answer. I do not remember.

101st cross interrogatory. Did or not any others than you, with your two brothers and Dr. Joseph J. Fales?

Answer. I do not remember.

102d cross interrogatory. By whom was the first meeting called, and in what manner?

Answer. I do not remember.

103d cross interrogatory. Where was said meeting; who attended the same?

Answer. I do not remember.

104th cross interrogatory. What was first done towards organization of the first meeting; then what was done also at that meeting?

Answer. I do not remember.

105th cross interrogatory. Was there at the first meeting any subscription book for stock, or was any stock in any way engaged to be taken; if so, how were those engaging to take stock bound to take it—in writing or verbally?

Answer. I do not know.

106th cross interrogatory. Was there or not any such subscription or engagement to take stock prior to the election of your officers?

Answer. I do not know.

107th cross interrogatory. How did you determine who was eligible to the offices and who were electors in said meeting?

Answer. I do not know.

108th cross interrogatory. Who were elected to the offices at the first choice; were they all, or any part of them, petitioners for the act of incorporation; had they or not previous to their election engaged to take any of its stock; if so, who did they engage with?

Answer. I do not know.

109th cross interrogatory. If any of the officers or others before the election of the officers engaged to take any of the stock, was such engagement with a person for the corporation authorized to contract for subscriptions; or were such engagements merely between you and your associates who bought the farm that you would procure for others some stock.

Answer. I do not know.

110th cross interrogatory. Did you or not engage to supply stock to others, and receive some kind of barter for the same; if so, to whom, and what barter?

Answer. Not that I remember.

111th cross interrogatory. Were you or not knowing to either of your brothers or Fales doing something of this kind?

Answer. No.

112th cross interrogatory. Where were the books of records of said corporation kept from said first meeting until 1st January, 1837; where are they now; in whose custody have they been? Is he now and has he

been clerk of the corporation? Have said books of records ever been, to your knowledge, out of the State of Massachusetts?

Answer. The books have been at some time in the possession of Theodore Baker, I believe. Whether he was clerk or not, I do not recollect; neither do I know whether or not they have been taken out of the State of Massachusetts.

113th cross interrogatory. After you and your associates in the purchase of said farm had opened said ledge or quarry, did you get out any granite; if so, how much did you get out before you conveyed the same to the corporation?

Answer. There was granite got out before the sale to the corporation, but I do not know how much.

114th cross interrogatory. What became of said granite; to whom did you sell it; was that granite large or small?

Answer. I do not remember.

115th cross interrogatory. Had or not you and your associates sold any granite prior to the time of your conveyance to said corporation; if yea, to whom? Had you or not shipped any to any market out of the State of New Hampshire?

Answer. I know nothing about it.

116th cross interrogatory. How much granite had you and your associates on hand, ready out, when you conveyed to the corporation; what was its value where it was?

Answer. I do not know.

117th cross interrogatory. Did you or not sell that also to the corporation with the farm; if so, for how much? Was there or not any particular bargain or account taken of the granite on hand, as the personal property belonging to you and your associates; or did you sell all your personal property to the corporation also?

Answer. I do not remember much about it, but I think all was sold in a lump.

118th cross interrogatory. What was the value of personal property which you and associates sold the corporation, if any?

Answer. I do not know.

119th cross interrogatory. How did the corporation pay you for that?

Answer. I do not know; I think it was paid for in the farm; I think all was sold together.

120th cross interrogatory. Had you or not paid for all the labor and materials, &c., up to the time of your conveyance? Did you or not settle up your concerns, pay your own indebtedness, and begin anew with the business of the corporation—keep on with the business in the same books, without noting where one left off or the other commenced?

Answer. I do not know.

121st cross interrogatory. How much granite did you and your associates and said corporation ever get out and sell or ship, including every thing merchantable, from first to last?

Answer. I do not know.

122d cross interrogatory. In what vessels, and where shipped to;

where sold, and for how much; what was done with the proceeds, if any?

Answer. I do not know.

123d cross interrogatory. Did or did not said rock all sell for enough to pay the expenses of quarrying it; did or not that which was shipped pay the freight; has said corporation ever paid Daniel Matthews for gondolaing the same to Portsmouth to the vessel?

Answer. I do not know.

124th cross interrogatory. How long were you quarrying after you got the ledge open; how many hands did you employ? State both before and after your conveyance to the corporation.

Answer. I do not know.

125th cross interrogatory. What did it cost per ton to quarry the rock; could it or not be done as cheap as your printed estimate represented?

Answer. I know not, and have no recollection of a printed estimate.

126th cross interrogatory. What was the rock worth per ton when quarried; was it or not worth what the printed estimate stated?

Answer. I answer as last answer.

127th cross interrogatory. Did or not the printed estimate represent such facts as would, if true, show the business to be very lucrative?

Answer. I have no remembrance of a printed estimate.

128th cross interrogatory. Did or not experience show the business to be ruinous?

Answer. I have no doubt it was a losing concern; my connection with the company ceased soon after the formation of it, according to my recollection before the winding up of its affairs.

129th cross interrogatory. Why was this discrepancy between the printed estimate and the experiment?

Answer. I know nothing of the printed estimate.

130th cross interrogatory. Where were said rocks shipped and sold, in 1836; if so, at what time?

Answer. I do not know.

131st cross interrogatory. Did or not the revulsion of 1837, enquired about in direct interrogatories, affect the sale of your rock?

Answer. It did affect the sales of all kinds of property.

132d cross interrogatory. If the rock would not pay for the quarrying in 1836, what *were* their prospects surely that fall?

Answer. I do not know that the rock would not pay for quarrying; but if they did not, the prospects of those concerned must have been ruinous.

133d cross interrogatory. Did or not said company pay their debts for labor in the fall of 1836, or their board bills for the same time? Does or not said corporation, or said Fales, now owe Mr. Emerson for said Fales' board.

Answer. I do not know.

134th cross interrogatory. Did you or not know of any of said company's stock being sold for barter? If yea, what articles; who sold it; to whom?

Answer. I exchanged my own stock in the company for other stocks, to Josiah J. Fiske, and others. Farther than that, I have not such knowledge that I can testify.

135th cross interrogatory. Did you or not know that said Fales sold some number of hundred dollars of it nominally, and took it in cotton batting?

Answer. I know nothing upon the subject. I think Fales did once say to me that he had exchanged some of his stock for cotton batting.

136th cross interrogatory. Do you or not know what said Fales did with said batting? Did he or not let said Daniels have it? Have you or not heard said Daniels and Fales say so? When was this?

Answer. I have no recollection upon this subject.

137th cross interrogatory. Did you or not know of any of said stock being bartered for the Odiorne Manufacturing Company's stock? If so, who were the parties to the trade; what was the nominal amount sold; and when was it?

Answer. I think that $25,000 nominally of this stock was exchanged with Josiah J. Fiske for stock in the Odiorne Manufacturing Company, by Fales, my two brothers, and myself. I cannot say when, but think during the year 1837.

138th cross interrogatory. Do you or not know that the stock in the Odiorne Manufacturing Company was never worth one cent; that it was a swindling business from first to last? Do you or not know that it was got up by J. J. Fiske in the same way Cleft Ledge Granite Company was, viz., that said Fiske bought an old factory for a trifle, got incorporated by that name, sold the old factory for some $100,000 to the corporation, and took notes to himself, and then struck off shares, and went to selling off stock? Is this or not substantially true about the Odiorne stock?

Answer. The Cleft Ledge Granite Company was not got up for swindling purposes; but whether the Odiorne Company was got up for that purpose by the said Fiske, I cannot say. The stock, however, proved to be of no value; and I have reason to believe, from facts that have since come to my knowledge, that said Fiske knew said Odiorne stock to be of little value at the time he sold it. Further than that I am not able to state. How said Odiorne Company was got up, I do not now remember, if I ever knew; and, therefore, cannot compare the getting up of the two companies.

139th cross interrogatory. Was or not Henry Fiske, of Wrentham, a brother of J. J. Fiske; and was he not concerned in the Odiorne Company?

Answer. I do not know.

140th cross interrogatory. Do you or not know that said J. J. Fales is a brother-in-law of said Henry, and that said Henry was a faithful agent of said Fales in negotiating said Fales' C. L. G. stock for him?

Answer. I do not know.

141st cross interrogatory. If the 11th direct interrogatory is answered

in the affirmative, will you state what, or which of said members raised money for said corporation upon their individual responsibility?

Answer. I do not know.

142d cross interrogatory. If money was raised upon the individual responsibility of members, what was done with that money? Of whom was it obtained? In what way; by hiring it, or otherwise? And how much was received?

Answer. I do not know any thing about it.

143d cross interrogatory. What reason was there of raising money upon the individual responsibility of its members in the fall of 1836? If the company had a real capital, was [it] in good standing and credit; with good prospects?

Answer. I do not remember that any money was raised upon the individual responsibility of the members in said company in the fall of 1836.

144th cross interrogatory. Had you or not any reasonable expectation, when you conveyed said 'Leathers' farm' to said corporation for $53,000, that the same would ever be paid, except by the sale of stock?

Answer. I had not.

145th cross interrogatory. If said corporation had issued stock to the nominal amount of $53,000, and owned said 'Leathers' farm,' subject to a mortgage of $2,500, and no other property, what should you consider the whole of said stock worth?

Answer. At that time I considered it worth the nominal amount of the stock; at this time I should not consider the stock worth much?

146th cross interrogatory. Do you or not know of said company ever having one dollar in their treasury? If so, who paid it, or any sum, into the same? Who was the treasurer at the time?

Answer. I do not now remember whether or not the company ever had one dollar in their treasury.

147th cross interrogatory. How was said money obtained, by a loan, or otherwise?

Answer. I do not remember that there was any money in the treasury.

148th cross interrogatory. Upon what capital did said company do their first operation? How did you pay their help off? How their other bills?

Answer. I am unable to answer this interrogatory; I do not remember.

149th cross interrogatory. Do you or not recollect a time when said Daniels and Fales, or one of them, brought a man to you, in the street, whom they introduced by the name of Warner? If yea, when and where was it? Did or not said Daniels and Fales, in an adroit manner, put questions to you which the truth would require you to answer in such manner as would lead said Warner to have a very different opinion of the value of the Cleft Ledge Company, *were* from what he would have had if the whole truth had been declared to him?

Answer. I have no recollection of ever seeing a man by the name of Warner. If any person was ever introduced to me by Fales or

Daniels, for the purpose of making inquiries about this stock or quarry, I gave them, I have no doubt, truly all the information in my power. I have no recollection of any such conversation as seems to be alluded to in this interrogatory.

150th cross interrogatory. Did you or not reluctantly respond to the said questions of said Daniels and Fales? And, upon their object upon said Warner, did you or not cease to answer or make any reply to their leading and adroit questions?

Answer. I have no recollection of any such questions being put to me as are referred to in this interrogatory; such questions may have been put to me, but if they were, I should not have felt any reluctance to answer them; I feel very sure that I should not have felt any inclination, and did not decline or fail to answer or reply to any questions put by Daniels or Fales.

151st cross interrogatory. What do you know, if any thing, about the trade between said Daniels and Fales for the stock which they, or either of them, put said Warner?

Answer. Nothing.

152d cross interrogatory. What do you know about there having been as many meetings held by the C. L. G. Company as seems to have been by a book which purports to be their records?

Answer. Nothing.

153d cross interrogatory. Did you or not ever know of meetings being held at any other place than said Fales' room?

Answer. I have no recollection where the meetings were held.

154th cross interrogatory. Have you or not ever heard said Fales, or any other one, propose to make up their records of said company in such a way as to show the meetings more frequent and different from what they actually were held?

Answer. No.

155th cross interrogatory. Did you or not, and when, sell to said Daniels, one of the defendants, 44 shares, or what other number of shares of said C. L. stock? If yea, was it so sold in part payment for real estate? If yea, what real estate, when purchased, of whom, what title did you receive, at what price did you buy it? Was there any, and if any, what incumbrance upon it? Of whom, and how, and for what did said Daniels obtain it? If said shares were in part payment, how was the rest of the purchase money paid? What did said Daniels do with said stock?

Answer. My impression is, that I did exchange some shares in the Cleft Ledge Granite stock for eastern land, with said Daniels, at the request of Fales; I do not remember how many shares; the exchange was made, I think, in the year 1837; I received from said Daniels a deed of conveyance, with general covenants of warranty; it subsequently appeared that said land was subject to a mortgage to Samuel J. Gardner, or some other incumbrance, by reason whereof my title was not considered of any great value; I should think the land was valued, in the exchange, at about five dollars per acre; I do not know how, or

in the affirmative, will you state what, or which of said members raised money for said corporation upon their individual responsibility?

Answer. I do not know.

142d cross interrogatory. If money was raised upon the individual responsibility of members, what was done with that money? Of whom was it obtained? In what way; by hiring it, or otherwise? And how much was received?

Answer. I do not know any thing about it.

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Answer. I had not.

145th cross interrogatory. If said corporation had issued stock to the nominal amount of $53,000, and owned said 'Leathers' farm,' subject to a mortgage of $2,500, and no other property, what should you consider the whole of said stock worth?

Answer. At that time I considered it worth the nominal amount of the stock; at this time I should not consider the stock worth much?

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Answer. Nothing.

153d cross interrogatory. Did you or not ever know of meetings being held at any other place than said Fales' room?

Answer. I have no recollection where the meetings were held.

154th cross interrogatory. Have you or not ever heard said Fales, or any other one, propose to make up their records of said company in such a way as to show the meetings more frequent and different from what they actually were held?

Answer. No.

155th cross interrogatory. Did you or not, and when, sell to said Daniels, one of the defendants, 44 shares, or what other number of shares of said C. L. stock? If yea, was it so sold in part payment for real estate? If yea, what real estate, when purchased, of whom, what title did you receive, at what price did you buy it? Was there any, and if any, what incumbrance upon it? Of whom, and how, and for what did said Daniels obtain it? If said shares were in part payment, how was the rest of the purchase money paid? What did said Daniels do with said stock?

Answer. My impression is, that I did exchange some shares in the Cleft Ledge Granite stock for eastern land, with said Daniels, at the request of Fales; I do not remember how many shares; the exchange was made, I think, in the year 1837; I received from said Daniels a deed of conveyance, with general covenants of warranty; it subsequently appeared that said land was subject to a mortgage to Samuel J. Gardner, or some other incumbrance, by reason whereof my title was not considered of any great value; I should think the land was valued, in the exchange, at about five dollars per acre; I do not know how, or

for what said Daniels obtained it; I believe he obtained it of Samuel J. Gardner, but I do not know that he did; I do not remember whether the said shares were given in part payment or in full payment for said land; I do not know what said Daniels did with said stock.

156th cross interrogatory. If in answer to the 8th direct interrogatory, you make any representations as to the 'standing and ability' of any, if any, persons therein inquired about, please state particularly the grounds of such your representations as to each individual, giving name you testify about, stating his means, what property he possessed, whether or not he has since, and when, become insolvent?

Answer. I cannot answer to this interrogatory farther than I have done in answer to the 8th direct interrogatory; I have no particular knowledge of the standing or ability of the persons inquired about; I have only a general impression of their standing and ability, but no knowledge whatever; since that time, all the original purchasers of the quarry have availed themselves of the bankrupt, or State insolvent law, I believe.

157th cross interrogatory. Have you had conversation with said Daniels, or any other person, and whom, about this case? Have these interrogatories, or any of them, or the substance of any of them, been before communicated to you? If so, by whom?

Answer. Daniels some months since called upon me, and asked me what, if any thing, I recollected about the business of the Cleft Ledge Granite Company, and of his trade with Warner; the interview was a very short one, as I told him that so much time had elapsed since the transactions alluded to, that every thing relating thereto had almost wholly passed out of my mind; I have no recollection that these interrogatories, or any of them, or that the substance of them, or any of them, except the general interrogatory of said Daniels above mentioned, have been communicated to me before the commissioner, who is now taking my deposition, read them to me.

I wish to say, in conclusion, that I have no disposition to evade any of the interrogatories or cross interrogatories that have been put to me above; I have answered as fully as I could. So long a time has elapsed, and so many subjects have occupied my thoughts since the occurrences, that my memory is very imperfect upon most of the subjects inquired about.

The defendants object to the following cross interrogatories as incompetent and irrelevant, viz: Nos. 5, 11, 19, 20, 59, 62, 68, 70, 76, 134, 135, 138, 139, 140, 145, 144, 154, 155.

N. A. THOMPSON.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On the fifteenth, twentieth, and twenty-seventh days of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Newell A. Thompson to come before me, in Roxbury, in the county of Norfolk, in said district; and he, being then and there

duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner*.

I, John F. Archer, of Wrentham, in the county of Norfolk, and Commonwealth of Massachusetts, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age, occupation, and place of residence?

Answer. My age is fifty-two years; I am a farmer; and I reside in Wrentham.

2d interrogatory. Do you know Adams Daniels and Samuel Warner, and when have you seen and known them?

Answer. I know Mr. Daniels as I see him passing in the street, but have had no acquaintance with him; I first saw him to know him within the last two years; during the period of two years last past I have seen him pass in the road; I knew Mr. Warner when he lived in Wrentham, and used frequently to see him while he lived there; he lived in Wrentham, in 1836, and several years previously.

3d interrogatory. Have you or not ever had any knowledge of a trade by said Warner with said Daniels, for some stock in the Cleft Ledge Granite Company?

Answer. No.

4th interrogatory. Was you or not knowing to it at the time it took place?

Answer. I was not.

5th interrogatory. Have you ever heard said Warner, since said trade, state what he had been offered or could take for said stock, or any part of the same? If yea, state when and where you heard him make such statements; who were present; what the sum was that he said he had been offered for said stock.

Answer. I have no knowledge of any trade between said Warner and Daniels, of the character enquired about; in December, 1836, in the highway, near the Eagle Factory, in Wrentham, I heard said Warner say, that he had stock in a granite rock in New Hampshire; and that he had been offered ninety-five cents on a dollar for it, but would not take it, because it was worth more than par value; Fisher Thayer and Henry Fiske were present.

6th interrogatory. Did or not Warner state that he would not take the sum offered because he knew the stock to be worth more?

Answer. He said he would not take it because it was worth more than the par value.

7th interrogatory. What reason, if any, did Warner give for not accepting said offer?

Answer. Because it was worth more than the par value.

8th interrogatory. State any other facts pertinent to this issue within your knowledge.

Answer. I do not think of any other facts, within my knowledge, pertinent to this issue.

The plaintiff objects to the testimony of John Archer as irrelevant.

Cross interrogatories propounded to said Archer by J. P. Bishop, esquire, solicitor for Samuel Warner.

1st cross interrogatory. How did you come by your knowledge of any trade between Warner and Daniels? Was it by hearsay or otherwise?

Answer. I have no knowledge of any trade between Warner and Daniels, except by hearsay.

2d cross interrogatory. If you ever heard said Warner say anything upon the subject, was it or not so long ago that it is impossible for you to recollect the precise expressions made use of by said Warner? Is not what you testify to that Warner said, a matter of impression rather than positive and distinct recollection of his whole conversation?

Answer. I think I have used the precise expressions used by said Warner, and state them from distinct recollection; and the reasons why I so distinctly remember what he said are, that I had been acquainted with Warner, and supposed him to be a sharp, shrewd man; and having heard that he had sold his farm for six thousand dollars, and taken granite rock in pay, for which he said he had been offered ninety-five cents on a dollar, but would not take it, altered my opinion of the shrewdness of the man; and that this conversation made an impression on my mind which I now distinctly retain.

3d cross interrogatory. Did you or not hear said Warner say much or little upon the subject of the granite stock he had bought of Daniels? Was it or not a subject which seemed to have infatuated him? Was he or not enthusiastic when talking with his neighbors about it?

Answer. I do not recollect that I ever heard Warner speak of the granite stock at any other time than that above mentioned; and I think I have before stated nearly all the conversation that I heard of Warner; I was with them but a very few minutes.

4th cross interrogatory. Did or not said Warner seem to be impressed so strongly with the value of said stock, that he was frequently and at all opportunities advising his neighbors to invest their property in the same?

Answer. Not to my knowledge.

5th cross interrogatory. If said stock was a mere worthless bubble,

was said Warner or not a deluded man; was he not, in your opinion, laboring under a great mistake as to the value of said stock?

Answer. I have no knowledge upon the subject matter of this enquiry other than appears from my previous answers.

6th cross interrogatory. Was or not said Warner impatient and excited when different views of said stock were opposed to his?

Answer. I do not know; not to my knowledge.

7th cross interrogatory. Was it or not generally well understood in Wrentham that said stock was got up to cheat and defraud the public; and that the same was worthless? Was there any other person, to your knowledge, who thought the stock worth any thing?

Answer. At that time it was not so understood, or considered worthless; since then I think it has been understood generally in Wrentham, that said stock was got up to cheat and defraud the public, and that the same was w rthless. John H. Hancock told me he owned some stock in the rock, and I presume he would not have owned it unless he thought it worth something, and particularly as he told me he paid for it in batting.

8th cross interrogatory. Was it or not general talk in the neighborhood, and through the town, that Warner had thrown his farm away, or that Daniels and Fales had cheated him out of it, or something to that effect?

Answer. Not at that time; I mean at the time, or about the time that I heard the conversation in the highway above stated; since then it has been the general talk in the neighborhood that the rock was worth nothing; I do not remember ever to have heard it said that Warner had thrown his farm away, or that Daniels and Fales, or either of them, had cheated him out of it, or any thing to that effect.

9th cross interrogatory. Was or not said Warner frequently rallied and joked upon the subject? Did or not you and your neighbors often introduce the subject of his trade for the purpose of witnessing his sanguineness of the value of what you and they were well satisfied was worthless?

Answer. Not to my knowledge.

10th cross interrogatory. Did or did not what said Warner said to you about said stock satisfy you that it was valuable? Did you or not feel any inclination to invest your all in the same in consequence of what he said; or did you consider his talk and enthusiasm upon the subject occasioned by his laboring under some mistake or delusion?

Answer. What said Warner said to me or in my hearing about said stock did not satisfy me that it was valuable; I did not feel inclined to invest any thing in it; I do not know that I considered him laboring under any delusion, but I thought he was laboring under a mistake; there was something or another that I could not see through, that he should refuse an offer of double or nearly, what a thing, in my estimation, was worth.

11th cross interrogatory. If said Warner stated to you that he had been offered any price for said stock, state all that was said by you or

others to him which induced him to say what he said; whether you or others (and if others, who,) had frequent and long discussions of the subject of his trade; whether you and others in such discussions were not generally found opposed to said Warner in your opinions and remarks as to the value of said subject of discussion?

Answer. I think I said nothing; they were talking upon the subject when I came up, and I do not recollect any thing that was said by any other person; Mr. Fiske might have said a word or two, but Mr. Warner said all or nearly all that I heard; I stopped but a few minutes; I have never had any discussion with Warner, neither have I heard any one else discuss this matter with Warner.

12th cross interrogatory. If said Warner said he had been offered any price, who did he say offered it to him, said Daniels, said Fales, or who; what did he say the price offered was to be paid in; was it or not in Odiorne stock, Tennessee lands, or what?

Answer. He did not say who had made him the offer which I have herein before stated; he stated that men in Boston had made him the offer, but called no name; he did not say what it was to be paid in; I should suppose from his statement that it was to be in cash.

13th cross interrogatory. What has kept in your memory what said Warner said eight years ago upon a subject of no interest to you, so that you can give the precise expressions used by him, and the inducements of such expressions?

Answer. I cannot answer this question otherwise than I have before stated as the reasons of my remembering the words used by said Warner.

14th cross interrogatory. Have you taken any uncommon measures to retain the same clear and distinct? If yea, why did you do so; at whose request; when?

Answer. I have not.

15th cross interrogatory. When, lately, was your mind first brought to the subject to test your recollection of what Warner said eight years ago; who broached the subject to you; how did he introduce it? Could you recollect distinctly and clearly each and every word Warner said when you was first enquired of as to your recollection of what he said; if you could not at first recollect, what means have been taken by yourself to refresh your memory?

Answer. Mr. Adams Daniels about a year ago came to me when I was at work in the field, and asked me if I had heard Mr. Warner say any thing about the rock; I reflected a few minutes, and told him what I have now answered that said Warner said; no means have been taken by myself to refresh my recollection, other than recalling to my mind what was said.

16th cross interrogatory. Have you or not, since you were inquired of, as to what you heard Warner say, talked with others as to what *they also* heard him say about the same time, or who were present and heard the same that you heard? If yea, who are those others; do they recollect as well as you do?

Answer. I have not since I was inquired of as to what I heard Warner say talked with others, or any other, to my recollection, as to what they also heard him say about the same time; Fisher Thayer, and Henry Fiske were present at the time of the conversation that I allude to; they stood very near to Warner and me, and I have no doubt that they heard it, but cannot say whether they did or not hear it; and whether or not they recollect it I do not know.

17th cross interrogatory. If you were the only one of all your neighborhood that had any recollection of the precise words, and the order in a conversation in which such words were spoken by said Warner, would you feel so sure you were correct; is it not because a number of others besides yourself agree with you in what Warner said that makes you feel more certainty in your correctness?

Answer. To the first branch of this interrogatory I answer that *I should;* to the latter branch of this interrogatory I answer '*it is not.*'

18th cross interrogatory. Have or not other members of your family some recollection of what Warner said in your and their presence, or some of your neighbors?

Answer. Not that I know of.

19th cross interrogatory. Were you and said Warner alone when he said what you have testified to; when?

Answer. We were not; as to the time when I have before stated.

20th cross interrogatory. If no one heard any thing of the kind but yourself, why was it so; were you and Warner more intimate than he and others of his neighbors; or were you more inquisitive and meddlesome about his business; or have you better powers to retain what took place 8 years ago than your neighbors; or have you taken greater pains to refresh your memory than others?

Answer. I do not know but others heard the same that I did; I have no doubt that Thayer and Fiske both heard it; Warner and myself were not more intimate than he and others of his neighbors; I was not at all inquisitive or meddlesome about his business, and did not inquire or meddle about this; and I do not know that I have better powers to retain what took place 8 years ago than my neighbors, and I do not know that I have taken greater pains than others to refresh my memory.

21st cross interrogatory. Has or not said Daniels called upon you and stated his case with said Warner to you? Has he not talked to you about what Warner said to others, and wished you to try and recollect what you heard him say? Has he or not stated to you that he meant to spare no means, or something of the kind, to defend the suit; that he wanted to prove that Warner said such and such words; that he, Daniels, knew he, (Warner,) did, for he could prove it by others, &c., or something of the kind; and then did he or not wish you would try and see if you could not recollect hearing Warner say the same?

Answer. I think said Daniels made some remarks to me relating to his case, when he came to the field where I was at work, as I have before stated, but I do not remember what he said; I think he said

something about Tennessee land; to the residue of this interrogatory, I answer—*no*.

22d cross interrogatory. Did or not said Daniels say he would satisfy you for your trouble? If said Daniels has not called upon you as inquired about, has any other person; and if so, who? Has or not any person called upon you to inquire what you could testify to? Have or not they taken some round about way to help you to get an impression that you really could remember sufficiently, distinctly, and clear, what a neighbor said 8 years ago, to swear to it word for word?

Answer. No, except that said Daniels called upon me in the field, and asked me what I have before stated.

23d cross interrogatory. Can you recollect the word of any other neighbor, spoken 8 years ago; especially those which did not concern you; are you positive you do said Warner's, without any addition or abatement?

Answer. I do recollect words of another neighbor spoken 8 years ago, that did concern me; and I presume I could recollect words spoken so long ago that did not concern me; in fact I do recollect that John H. Hancock, more than eight years since, stated that he owned stock in the Granite rock, and paid for it in cotton batting, and this was a matter that did not at all concern me; I think I am positive that I have repeated the words used by said Warner, without any addition or abatement.

JOHN F. ARCHER.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

On this twenty-second day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused John F. Archer to come before me, in Wrentham, in the county of Norfolk, in said district; and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence, and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE,
Commissioner.

I, John W. Whiting, of Cumberland, in the State of Rhode Island, of the age of about thirty-seven years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age, occupation, and place of residence?

Answer. My age is thirty-seven years; I am an innkeeper, and reside in Cumberland, at Woonsocket Falls, in the State of Rhode Island.

2d interrogatory. Are you acquainted with Samuel Warner and Adams Daniels?

Answer. I am.

3d interrogatory. When and where did you become acquainted with said Warner; have you or not ever lived in his neighborhood?

Answer. I became acquainted with said Warner when he first moved to Wrentham from Providence; I do not recollect what year that was, but I think it was about twelve years or more since; I always lived in his neighborhood when he lived in Wrentham.

4th interrogatory. Was you knowing to said Warner's selling his farm to said Daniels, for Cleft Ledge Granite stock?

Answer. Yes.

5th interrogatory. How much would said farm have brought at auction for cash, at the time of this trade?

Answer. I should think it might have brought four thousand or forty-five hundred dollars; all that he had there, farm and outlands.

6th interrogatory. Was you or not residing near said Warner at the time of this trade, and how long afterward?

Answer. I was residing at the time of the trade within one mile of said Warner, and continued to live in the same place until two years ago last April.

7th interrogatory. Was you or not in the way of seeing Warner often about this time? Did he say much or little about this trade, in your hearing?

Answer. I was in the way of seeing Warner often about this time; he said much about this trade in my hearing, both before and after the trade was made.

8th interrogatory. What, if any thing, did you ever hear him say about his examining into the affairs of the company, before he bought said stock; who, if any of the officers of said company, did he say he called upon?

Answer. I heard him say that he went to Boston, and had seen some of the granite, and told of a number of persons that he had seen who were pleased with the stock, and thought it to be good. I do not recollect the name of but one of the persons whom he mentioned, which was Mr. Odiorne, and that he had been to the city of Boston, and had ascertained that the stock was good. He told of calling upon directors of the company, and he mentioned their names, but I do not remember the names.

9th interrogatory. What, if any, did he say of the manner in which said Daniels seconded and assisted him in his inquiries about said stock?

Answer. I do not recollect of his saying any thing about it.

10th interrogatory. What, if any thing, of Mr. Daniels' bearing in the whole transaction?

Answer. He said that Mr. Daniels had conducted in the trade like a gentleman, and traded fairly and honorably; and spoke in high praise of said Daniels.

11th interrogatory. Did he or not tell you that he had fully informed

himself about the organization and standing of the company, and value of the stock, before he purchased?

Answer. He did; and that it was worth dollar for dollar in the city.

12th interrogatory. What did he tell you, if any thing, about his looking thoroughly into the affairs of said company?

Answer. He said he had been to Boston, and stopped a day or two, or a few days, and had looked into the affairs of the company as much as he could, and found every thing as Mr. Daniels had told him.

13th interrogatory. Did he or not advise you to sell your farm for stock? What did he advise you about that?

Answer. He did advise me to sell my farm, or rather my father's farm, for stock in the Granite Company, that we might get money to pay our debts; for that the stock was good, and could be sold at any time for cash in the market, and would rise in value fast; that it would soon rise to one dollar and a quarter for a dollar, and that he then considered his stock worth a dollar and ten cents.

14th interrogatory. What did he say his stock was worth?

Answer. One dollar and ten cents.

15th interrogatory. Was or not Warner a trafficking man? How was he; sharp for a trade, or otherwise?

Answer. He was a trading man; and was called the sharpest trading man that had ever lived in the town.

16th interrogatory. State any other facts within your knowledge pertinent to this issue.

Answer. After the trade, he stated that he was very glad he had sold his farm, and was well satisfied with his trade. And Mr. Daniels had conducted like a gentleman through the whole of it; and that he considered the Granite stock good, and if he owned half the town he would swap it for the same kind of stock. When I was asking him how he knew the stock to be good, he said that William Messenger owned some of it, and some others in Wrentham owned some of it; and they considered it good, and he did too. When I at one time was in Providence, after the trade, he told me he had swapped his Granite stock for some land in Tennessee, or out that way, and had traded for a large number of acres of land, or something like that; I asked him if he had made a good trade; he said he had got the land to sell, and he did not know how much it would net him.

I do not recollect any other fact within my knowledge that I consider pertinent to this issue.

The plaintiff objects to the testimony of said Whiting as irrelevant.

Cross interrogatories proposed by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st cross interrogatory. If your answer to the 7th direct interrogatory is that you did hear said Warner say much about the trade with Daniels, was he or not enthusiastic upon the subject; did he or not appear like a man under a delusion, and incapable of thinking soberly upon the subject he so much conversed about?

Answer. He seemed to think that he had made a good fair trade; he did not appear like a man under a delusion, and appeared as sound and capable of doing business as at any time during the time I was acquainted with him, and as capable of thinking as soberly upon the subject as ever, or as on any other subject; he seemed as calm and judicious, and cool about it, as I ever saw him about any trade.

2d cross interrogatory. Will you state how much, and how often, you heard Warner talk upon the subject of his trade with Daniels?

Answer. I should think twenty times; sometimes half an hour at a time, sometimes not more than 5 or 10 minutes.

3d cross interrogatory. Will you state, as nearly as you can, how many times you have heard Warner talk upon the subject?

Answer. I should think twenty or thirty times.

4th cross interrogatory. What did he say the first time; where was it, when was it; who was present, who began the conversation, you or he; if you began, what did you say? Give the whole colloquium, or none of it.

Answer. The first time he talked about trading his farm with Adams Daniels, and thought he should trade it for Cleft Ledge Granite Company stock; and that there was a company that had been operating on the ledge, and that they had not done much with it as yet, but they now had got incorporated, and they were going to make a great deal of it, and it was going to be good stock; this was at my father's, in Wrentham, the fall that he traded with Daniels, or just before he traded. My father and his family were present; he began the conversation. I have stated all that I recollect that he said at that time.

5th cross interrogatory. Will you give the whole conversation between you and him at the second time you heard him say any thing upon the subject; can you or not say you have given every word either of you said upon the subject exactly in the order it was spoken; please give the time, place, and who present?

Answer. I cannot state the conversation between me and him at the second time I heard him say any thing upon the subject; and I cannot say where it was or when it was; he spoke of it frequently; sometimes at his house and sometimes in the street, and sometimes when I would be riding with him; but I cannot distinguish what was said at the second time; and I cannot say when the second conversation was had upon this subject.

6th cross interrogatory. If you had a third, fourth, fifth, and so on, conversation with said Warner, and attempt to state what he said, state particularly what was said by you also; and give the whole conversations, with times, places, and persons present.

Answer. I cannot; sometimes the conversations were at his house, sometimes in the bar-room of the tavern, sometimes at the neighbors', sometimes in the highway, and sometimes in the Eagle factory; sometimes other persons were present, and sometimes no other persons would be present. I have heard him speak of it in the presence of Eliphalet Whiting, Harvey Whiting, and Elias Whiting; but I cannot

give the whole conversation, nor all that was said by me at any one of the conversations.

7th cross interrogatory. Can you or not, eight years afterwards, distinctly recollect whether said Warner used the word 'examine' in any of his conversations with you; will you say positively he used that word at all in all his conversations with you?

Answer. I should think he did, but I am not positive; perhaps not every time, but a great number of times.

8th cross interrogatory. Might not said Warner have said, 'I have been told,' instead of 'I have examined,' in his conversations with you?

Answer. He said both; he used both expressions.

9th cross interrogatory. What makes you recollect that particular word; why might he not have used some other word of the same meaning?

Answer. I don't know what makes me recollect that particular word; but I do feel quite sure that he did use this word frequently.

10th cross interrogatory. Did or not said Warner say he was told that the company was so and so, and that the stock was valuable, &c.?

Answer. Yes; and also that he had examined for himself.

11th cross interrogatory. What did Warner say he had examined; did he or not pretend to you that he had seen their quarry; did he or not pretend to you that he knew any thing except what some of the company told him?

Answer. He said he had examined a piece of the granite brought from the ledge; I do not recollect whether or not he pretended that he had seen the quarry; he said he had examined and looked into it for himself.

12th cross interrogatory. Did Warner or not state to you that he had informed himself that said company was a concern got up without any capital?

Answer. No; not that I remember.

13th cross interrogatory. Have you or not now any distinct recollection that Warner used in his conversations with you either of these words, viz., 'value,' 'standing,' or 'organization?' If so, state precisely how he used them, or either of them; how in connection with some remark of yours?

Answer. I have a distinct recollection of his using all those words; he spoke of the *organization* of the company; that the company stock was in good *standing* in the market; and that he had conversed with men in Boston of high *standing*, about the stock; and that the *value* of the stock was spoken of I feel sure; but I cannot give the other words spoken or used with it, or the exact connection in which it was used.

14th cross interrogatory. Have you or not, after this lapse of time, forgotten the precise phraseology which Warner used, and retained the substance of what he might have said?

Answer. I think I have stated the exact phraseology used by him.

15th cross interrogatory. Have you or not talked as much about said trade between said Daniels and Warner as you think Warner did; are you not a talking man; are you not much more so than men average; are you not more so than Warner; were you not at that time a person who paid full as much attention to other people's affairs as you did to your own?

Answer. I have talked a great deal about the trade between said Daniels and Warner; I should not think that I have talked as much about it as Warner has; I am a talking man, and perhaps more so than men average; I do not think more so than Warner when he is out, or with company; I should think I had paid more attention to my own affairs than to the affairs of other people; I have had business enough of my own to see to; for the last 25 years I defy any person to say that I have interfered with the business of any other person, in any way, shape, or fashion, in any case whatsoever.

16th cross interrogatory. Do you or not think a story would lose or gain by having been in your keeping 8 years?

Answer. I never calculated to tell any story larger than what was correct—to add or diminish from the truth.

17th cross interrogatory. How long ago did you tell any person that Warner told you what you have testified to?

Answer. Probably a year and a half, perhaps two years.

18th cross interrogatory. To whom did you tell the same; when and where was it; was that the first time you related it to any one? If not, when before that; to whom; when and where?

Answer. I do not know that I have told to any one all that I have now testified to; I have told a part of it to Mr. Daniels, at my house, in Cumberland, some time within two years, I should think, but I cannot state exactly the time; I think I stated a part of it before that to people in the town of Wrentham, to Elias Whiting and his family, Eliphalet Whiting and his family, Harvey Whiting, Jonathan Whitney Witherell, John F. Archer, Curtis Stone, and many others, soon after Capt. Warner sold his place and left the town of Wrentham, at various places, wherever I happened to meet folks.

19th cross interrogatory. How many times since have you spoken of what Warner said to you; to whom did you speak each time; what did you relate to them each time?

Answer. I cannot tell how many times since—a great many times; I cannot tell to whom I spoke each time; I have talked with a great many; I cannot relate what I said each time; sometimes I would tell one part of it, and sometimes another part.

20th cross interrogatory. How long ago did you inform Adams Daniels what Warner said to you; where were you; did he come to you; did he or not make enquiry; could you at first tell him right off straight, word for word, all Warner said; or did he have to drum you up; did he or not ask you if Warner did not say so and so, and shape one way and the other until he got it to what you now recollect?

Answer. I have seen Mr. Daniels a number of times, and a number

of years ago informed him of some part that Warner had said to me, at the City Factory once; once at Curtis Stone's, at Wrentham Centre, and at other places; it was at accidental conversations when we met, except the time when he came to my house in Cumberland, which I have before mentioned; he has asked me what I recollected; he never drummed me up; he only asked me what Warner said, and what I recollected that he said; I told him right off what I recollected, without any promptings of his.

21st cross interrogatory. Did you or not have to reflect upon the subject and tell Daniels at another time; did he or not state to you his case, and how Warner did, and then ask you if you had not heard Warner tell over how he did; if so, what did you say to him?

Answer. I told him what I had heard Warner say, when he first inquired of me; I did not take any time to reflect upon what he had said; he said he expected there would be a suit, or that there was one, I do not recollect which; I believe he asked me what Capt. Warner said to me about the farm; I told him that Capt. Warner said that he expected to get his place back, and told him much that I have testified to.

22d cross interrogatory. How does it happen that you remember, at this length of time, word for word, or any thing near word for word, what was said by any particular neighbor to you; why do you not as well what every neighbor has said to you?

Answer. I do not remember word for word what was said, or has been said, by any particular neighbor, to me.

23d cross interrogatory. Can you state one other interview where you can do the same with any other person except said Warner?

Answer. I cannot.

24th cross interrogatory. Were you or not a neighbor of Caleb Whiting, at or about the same time? Did you or not hear said Caleb Whiting say something eight years ago which you can give word for word; what was it; when, where, who present?

Answer. I was a neighbor of Caleb Whiting at or about the same time. To the remainder of this interrogatory I answer that I cannot.

25th cross interrogatory. How many acres of land did you own when Warner advised you to exchange it for stock?

Answer. I did not own any land; my father owned one hundred and seventy or eighty acres of land.

26th cross interrogatory. If you say Warner was a trafficking man, state why you call him so; what did he ever traffic in to your knowledge?

Answer. He traded in oxen, horses, and land; and kept a store, and traded in West India goods.

27th cross interrogatory. Has or not the substance of what interrogatories have been put to you been communicated to you before your appearance before the commissioner to be examined; if yea, who communicated the same?

Answer. No.

JOHN W. WHITING.

UNITED STATES OF AMERICA, *Massachusetts district, ss:*

On this twenty-third day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused John W. Whiting to come before me, in Cumberland, in the State of Rhode Island, at a village called Woonsocket village, and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, John E. Brown, of Providence, in the State of Rhode Island, of the age of about thirty-six years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esq., solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age, occupation, and place of business, and how long have you resided there?

Answer. I am about thirty-six years old; I am a merchant, and my place of business is Providence, in the State of Rhode Island, where I have always resided, except while I was travelling in Europe about a year, and about two years that I resided in the city of New York, in 1839 and 1840.

2d interrogatory. Do you or not know Samuel Warner, of Providence, and A. H. Montgomery and Wm. Whiteside, of Tennessee; and where, and when, have you seen and known them?

Answer. I know all said gentlemen; I knew Capt. Warner in Providence, and have known and seen him in Providence for the last ten years; Mr. Montgomery I knew and saw in the city of New York, in the summer of 1839; and William Whiteside at the time and place last named.

3d interrogatory. Did you or not act as agent for said Montgomery and said Whiteside, or either of them, in a certain trade between him, or them, and said Warner, about some land in Tennessee? Did you act in any capacity in negotiating, arranging, or consummating said trade? When was it?

Answer. There was a trade made between said Warner, Montgomery, and Whiteside, about some land in Tennessee, through me; more as a friend to Capt. Warner than in any other capacity.

4th interrogatory. By what means were Warner and the owner or owners of said land brought into this negotiation; how, when, and where; and did or not said owners negotiate personally or through you?

Answer. Messrs. Montgomery and Whiteside were in the city of New York selling lands in Tennessee; Capt. Warner, I knew, had some

granite stock that he had told me he wished to get rid of for land; and I wrote to said Warner informing him that Montgomery and Whiteside had land to sell in Tennessee; this was in the summer of 1839; Capt. Warner, after the receipt of my letter, visited New York, and conversed with said Montgomery and Whiteside about said land, and personally and through me, negotiated with them for the purchase of said land; the purchase was finally made through me.

5th interrogatory. State what Montgomery and his associate, if he had any, proposed to sell said Warner, and in what Warner proposed paying them?

Answer. Montgomery and Whiteside proposed to sell said Warner some land in Tennessee, (9000 acres, I think,) and Warner proposed paying them in the stock of the Cleft Ledge Granite Company, in New Hampshire, I think.

6th interrogatory. If you say that said owners of said land proposed to sell Warner 9000 (or any other number) of acres of land, situate in Tennessee, and that Warner proposed to pay him in Cleft Ledge Granite stock, please to state fully and particularly—1st, what representations said owners of said land made concerning the location, quality, and general qualities of said land; 2d, what representations said Warner made to you or said owners about said company; what about the quarry; what view he gave you of its favorable location for profitable working; what he said of the facilities of the company for working it; and what he said of its value.

Answer. I do not remember whether or not Mr. Whiteside made any representations about the land; Mr. Montgomery extolled the land very highly; he said the location was very advantageous; there was a contemplated railroad that would come within ten or twenty miles of it; that a small river run near the land; and that some of the land had coal upon it; and that scows could come up near to it, and take it off; and made many other statements in regard to the value and worth of the land, extolling the location and quality of it in high terms, but I do not recollect, in particular, what more was said than I have detailed; I never heard Warner make any representations to Montgomery or Whiteside about said Granite Company, or about the quarry, that I remember; he talked with them about it, but I did not overhear what was said; he stated to me that he had never seen the quarry himself; but seemed very enthusiastic about the goodness and value of the quarry and of the stock; I think he made many statements about the quarry, and of its favorable location for profitable working, and of the facilities of the company for working it; but I do not recollect the particular statements made by him; but only that in general terms he expressed himself as of the opinion that the quarry was good and valuable; and that it could be worked advantageously, and that the company had facilities for working it to advantage; and he handed or sent to me two documents, giving a description of the location, advantage, &c., of the said quarry; one of them signed by a man by the name of Fales, I do not remember his Christian name; and the other by a man whose

Christian name I did not hear, named Jackson ; and my impression is that he was called Dr. Jackson ; one of these documents was printed, and the other was written.

7th interrogatory. State all that he said bearing upon the value of the stock ; annex any and all documents, bearing upon that point, communicated to you by said Warner, or, if impracticable, verified copies thereof.

Answer. I cannot state any thing further said by him than I have stated in my last answer, bearing upon the value of the stock ; I have not in my possession, or within my control, any documents bearing upon that point ; those that were given to me, by said Warner, were returned to him when the stock was returned to him, in the fall of 1839, or the winter of 1840 ; and I am not able to give copies thereof.

8th interrogatory. How much and what was Warner to give said owners of said land for said land, by the terms of their final agreement? How many shares, or what value in stock, and what other security?

Answer. He was to give them all the stock he had in said Granite Company ; I do not recollect the number of shares ; I think the shares were twenty-five dollars each ; and the value of sa d shares was six thousand dollars ; and he was to give them his promissory note for fifteen hundred dollars ; the stock was left in my hands ; and Warner was to go out to Tennessee and see the land, and if he liked it, and it was such as it had been represented to him, I was to transfer the stock to Montgomery, or Montgomery and Whiteside ; otherwise I was to return the stock to Captain Warner ; it was for Captain Warner to say ; he was to keep the land, and Montgomery and Whiteside were to keep the note ; and it was for Captain Warner to say, when he should return from Tennessee, whether or not he would give them said stock for said land in addition to said note.

9th interrogatory. Give the exact terms of the contract between said Warner and said owners of said land, about said land and stock ; if it was in writing, if practicable, annex the same or a verified copy thereof.

Answer. I have answered this question in my answer to the last interrogatory ; the terms of said contract were reduced to writing by me, and was signed by the parties ; I have not got said contract, or a copy of it, and cannot annex the same, or a copy of it.

10th interrogatory. If the writing is not in your possession, give the contents thereof to the best of your recollection.

Answer. I have given the contents thereof, to the best of my recollection, in my answer to the 8th interrogatory above, to which I refer.

11th interrogatory. What security, besides the stock, was he to give said owners of said land for the land? What security did he give?

Answer. He was to give, and did give, his note for fifteen hundred dollars, in payment for the purchase of said Tennessee land ; not as security; and the stock was to be given besides for the purchase and in payment therefor, on the conditions stated in my 8th answer above.

12th interrogatory. Did he or not get certificates of his responsibility, and what names were attached thereto?

Answer. He did get a certificate of his responsibility, signed by J. H. Ormsby, John H. Mason & Co., and Whitaker and Foster.

13th interrogatory. State fully and particularly how and in what manner Warner induced said Montgomery to believe that he (Warner) was good for $1500, and whether or not one of the certifiers was the man that the name purported to represent, or how otherwise? State all the features of that transaction as far as you know them.

Answer. It was not the object to convince Montgomery that Warner was good for $1500; said Montgomery would not take the note or make the trade unless he could find some one to take the note, without rendering himself liable thereupon; Mr. Warner handed me the certificate aforesaid, which I sent by boat, or by mail, to my brother in New York, to give to Montgomery; whether or not one of the certifiers was the man that the name purported to represent I do not know of my own knowledge; there were two persons in Providence by the name of J. H. Ormsbee.

14th interrogatory. Did said owners of said land deed said Warner said land, and what was the consideration for the same? Was or not that consideration passed to them or to you as their agent?

Answer. Said land in Tennessee was deeded to said Warner by said Montgomery and Whiteside, or one of them, for the said note of $1500, and the granite stock conditionally, as stated in a former answer; the note was passed to Montgomery by my brother, to whom I sent it for that purpose, it having been given to me by said Warner to be thus transmitted; the stock was lodged with me to await the decision of said Warner, as stated in a former answer; and Warner, on his return from Tennessee, expressed himself dissatisfied with the land, and stated that it was not such as it had been represented, and I returned the granite stock to him.

15th interrogatory. To whom was said note passed?

Answer. I have answered this in my last answer.

16th interrogatory. Was there or not any agreement, on the part of said Montgomery, to retransfer said stock to said Warner upon any and what contingency? What was the agreement about that? Was it in writing? Who has that writing? If it is in your possession please annex the same.

Answer. Said stock never was transferred by Warner; and there was no agreement to retransfer said stock to said Warner upon any contingency whatever; the agreement was that Warner was to transfer the stock, provided he should be satisfied with the Tennessee land, and it should prove, upon examination, to be what it was represented to him; otherwise it was not to be transferred, but the certificates were to be returned to him by me, who held the same as the agent of both parties; this agreement was in writing; I think I gave up this writing to Warner when I returned to him the certificates of the stock; I have it not, and cannot annex it.

17th interrogatory. Was or not that stock ever passed over to Montgomery? Was it or not held by you for Montgomery?

Answer. It was never passed over to Montgomery; I held the same, as is stated in my last answer.

18th interrogatory. Did or not said Warner demand the retransfer of said stock? For what reasons?

Answer. I do not know that he made any particular demand for the retransfer of said stock; it had not been transferred; when he returned, and said that the land was not as represented, I returned to him said stock, in compliance with the terms of the agreement.

19th interrogatory. Did or not said Montgomery reconvey the same to said Warner, and what were his reasons for so doing?

Answer. He did not, and could not, because it had never been conveyed to him.

20th interrogatory. Do you or not know said Warner has, since that time, represented said land to be all that was represented to him to be?

Answer. I do not.

21st interrogatory. Did or not said owners of said land represent said land to be better or more valuable than said Warner has represented the same to be, in an advertisement in the Republican Herald of December 23d, 1843, or about that period?

Answer. I do not recollect the terms of said advertisement, or the representations of said land therein.

22d. Erased.

23d interrogatory. When said note became due what, if any thing, did Warner do with his property in Providence? State what you know about said Warner's doings in that matter; when did said note become due?

Answer. I do not know any thing about the subject enquired of.

24th interrogatory. What part of said note did Warner finally pay?

Answer. I do not know, of my own knowledge.

25th interrogatory. Was or not the said stock conveyed by said Warner to his son, immediately previous to the maturity of said note?

Answer. I do not know.

26th interrogatory. Was or not said Warner's real estate reconveyed to him after he compromised said note?

Answer. I do not know; I do not know that he ever conveyed it away.

27th interrogatory. Was or not said conveyances made to defeat and defraud the holders of said note? State what facts you know bearing upon that point.

Answer. I have no knowledge upon the subject.

28th interrogatory. Has or not said Warner been to you, since an enquiry into the transaction here referred has been instituted, and obtained original papers connected with this transaction? If yea, state what papers they were, to what they related, and their contents, to the best of your knowledge; what, if any, persuasions did said Warner make use of to induce you to give the same up? What does said Warner value said land at now?

Answer. I do not know when the inquiry into the transaction here

referred to was instituted; immediately after the return of said Warner from Tennessee, in the winter of 1839–'40, I gave to him all the papers that I had connected with this transaction, which consisted of the certificates of the granite stock, the printed and written documents, signed, the one by Mr. Fales and the other by Mr. Jackson, before referred to, and the contract between said Warner and Montgomery and Whiteside, before mentioned, except twenty shares of the granite stock, the certificate of which I could not find among my papers, and it was never returned by me to said Warner; the contents of these papers I have given, according to the best of my knowledge, in my former answers; Mr. Warner used no persuasions to induce me to give up said papers; I do not know how said Warner values said land now.

29th interrogatory. State any other facts, within your knowledge, pertinent to the issue in this case.

Answer. I do not recollect any other fact, within my knowledge, pertinent to the issue in this case.

FREDERIC W. SAWYER,
Solicitor for the defendants.

The plaintiff objects to the testimony of John E. Brown, and the interrogatories propounded to him by the defendants, as wholly irrelevant, and that it is incompetent to prove many matters enquired about by oral testimony.

Cross interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st cross interrogatory. Where did you reside, and what was your occupation, at the time you first became acquainted with A. H. Montgomery and Wm. Whiteside?

Answer. I resided in New York, and was engaged in the dry goods business.

2d cross interrogatory. Was you or not ever employed by either, or both, of them? If yea, what did you undertake to do for them? What did you do for them? If you state you undertook to sell 9,000 acres of land in East Tennessee for them, will you state where said land was 'situated;' whether in a fertile valley, or was the tract in mountainous, broken, and barren region?

Answer. I undertook to sell for them nine thousand acres of land in East Tennessee; in Bledsae, or Marion counties; on Waldron's ridge, so called, at the termination of the Alleghany mountains, as I think, on the Cumberland mountains; a rough, mountainous region; whether barren or fertile, I do not know.

3d cross interrogatory. Do you or not know, or have you or not been informed by said Montgomery and Whiteside, that said land was upon the top of a spur of the Cumberland mountains, called Waldron's ridge?

Answer. I have been informed by both Montgomery and Whiteside, that said land was upon the top of a spur of the Cumberland mountains, called Waldron's ridge.

4th cross interrogatory. Have you or not been informed by said Montgomery and Whiteside, that said lands were of very little or no value, and cost them, or the owner, a McLee, nothing except the expense of surveying the same, and a small fee at the entry office?

Answer. Yes.

5th cross interrogatory. Have you or not ever sold, or had a power to sell, any other similar tract of land in Tennessee, for the same gentlemen, or any one else? If yea what was you authorized to sell the same for per acre?

Answer. I was authorized to sell another similar tract of land for said Montgomery for the most that I could get for it, and he would give me half the amount of the sales; no price was mentioned.

6th cross interrogatory. Did said Montgomery and Whiteside or not, in said trade with said Warner, agree with him that they would deed him the 9,000 acres of land, and take his note for $1,500, and that he might deposite his granite stock in your hands until said Warner should go on and see the lands, upon that condition, as if he was satisfied with his trade, then Montgomery and Whiteside were to have said stock; but if, after seeing the land, he was not satisfied with said land, said Warner was to retain his stock; and was there or not a written agreement to that effect by said Montgomery, or said Whiteside, or both? Did you or not receive said certificates of stock of said Warner with a full understanding of, and to hold the same wholly subject to, the conditions of said writing?

Answer. Yes.

7th cross interrogatory. If you assisted said Montgomery and Whiteside in their trade with Warner, what part did you take in making said trade? Did you or not write said Warner from New York, and introduce or propose said trade to him? Did you or not, in said letter, represent said land to him? If yea, did you represent it to him, in your letter, all said Montgomery and Whiteside had to you, and the same as they did *or* said Warner afterwards to your knowledge?

Answer. I did write said Warner from New York, and propose said trade to him; and, in my letter, I did represent said land to him as said Montgomery and Whiteside had represented it to me, and the same as they did to said Warner afterwards to my knowledge.

8th cross interrogatory. Are not the letters here shown you, marked A and B, letters which you wrote for said Montgomery and Whiteside to said Warner, representing said land to him? If so, will you have them identified and made a part of your answer by being annexed to it?

Answer. No letters are shewn to me.

9th cross interrogatory. When you first proposed said trade to said Warner, had you not previously informed said Montgomery and Whiteside of the opportunity you had in view for them to dispose of their land?

Answer. I had.

10th cross interrogatory. Had you or not also informed them that

said Warner had this stock, with which he would wish to pay for said land?

Answer. Yes.

11th cross interrogatory. Had you or not, previous to your writing said letter marked A, with said Montgomery and Whiteside, made enquiries and ascertained the value (if it had any) of said stock?

Answer. As I have not seen the letter referred to in this interrogatory I cannot answer this question.

12th cross interrogatory. Had you and your employers or not ascertained, previous to your writing letter marked A to said Warner, that said stock was wholly worthless? If yea, did or not Montgomery and Whiteside, to your knowledge, in their proposition which they made through you to said Warner to sell him said land, consider said stock any thing? Was it or not, to your knowledge, their sole object to sell said land to said Warner for his note for whatever sum they might induce him to give it?

Answer. I cannot answer the first part of this interrogatory as I am not shewn said letter; said Montgomery and Whiteside, in their proposition made through me to said Warner to sell him said land, did not consider the granite stock worth any thing; they cared nothing about the stock; their sole object was to sell the land for money, or goods, or what they could at once convert into money or goods, and they would not have sold it for said note unless they had have known where they could dispose of the note before the trade was made.

13th cross interrogatory. What did you and Montgomery and Whiteside, upon enquiry, find the character and standing value of said Cleft Ledge stock?

Answer. We could not find that said stock had any value; the character and standing of said Cleft Ledge stock was bad, so far as we could ascertain, in so far as related to its being valuable; it had not a market value so far as we could ascertain; those that we saw that knew any thing about, said it was worth nothing.

14th cross interrogatory. What became of the certificates of stock left with you by said Warner? Were they or not handed back to him again, in part or the whole? If not the whole, why not? What became of the rest?

Answer. The certificates were all handed back to said Warner, except a certificate of twenty shares that I could not find, which was either mislaid, or some person took it to make inquiries about it, and never returned; I do not know what has become of it.

15th cross interrogatory. For what reason did you give them to him instead of to said Montgomery or Whiteside; did you or not do it because you considered that they belonged to him by the terms of the said Warner's agreement?

Answer. I gave the certificates to said Warner because I considered that they belonged to him by the terms of the written agreement.

16th cross interrogatory. Have you or not any knowledge of what said Montgomery & Whiteside would have sold said land for per acre,

rather than return to Tennessee without selling it? If so, what; would they or not, to your knowledge, from instructions about said lands and similar lands, have sold the same for from 5 to 10 cents per acre; what number of acres of the same land did said Montgomery & Whiteside deed you in payment for your services in assisting them in selling the 9,000 acres to said Warner for his note for $1,500?

Answer. I think they would have sold it for five cents per acre; Montgomery & Whiteside, or one of them, conveyed to me three thousand acres of similar land in payment for my services in assisting them in selling the 9,000 acres to said Warner for his note of $1,500, as before stated, and for a gun and some few little articles that, together, I considered of the value of from 75 to $100.

17th cross interrogatory. If said Warner ever gave any representations of said Granite Company, or stock, did he not also state to you he had never seen the location or situation of said Co., and knew nothing except from the representations from others, or of those from whom he bought?

Answer. Yes.

18th cross interrogatory. Did or not said Warner give said owners of said land all the security which he agreed to give?

Answer. Yes.

19th cross interrogatory. Was it or not any of his original agreement with said owners of said land, that he should have his responsibility certified to?

Answer. I think not; upon reflection, I recollect that Montgomery said he would not take Warner's note unless he could use it in the market without his endorsement; and I think I suggested to Capt. Warner to get such a certificate, so that Montgomery could use the note.

20th cross interrogatory. Had you or not delivered the deed of said land to said Warner, and received of him his note for $1,500, before one word was said to him about having persons certify any thing about his responsibility?

Answer. I do not recollect; my impression is, that the deed was not delivered until Montgomery found that he could sell the note; but I am not certain.

21st cross interrogatory. After you had delivered the said deed to him, and received said note from him, did you or not, down by the post office, propose to said Warner, as a matter of accommodation and favor, and to enable said Montgomery & Whiteside to use said note in the purchase of goods, and to corroborate your statement to them of him, that he got a certificate of some of his friends, that, in their opinion, he was responsible for the amount?

Answer. I recollect of making such a proposition to said Warner by the post office, but I do not recollect whether it was before or after the deed was delivered to him, and the note was received from him; but my impression is, that the deed and note were not exchanged until Montgomery had found where, and to whom, he could dispose of the note.

22d cross interrogatory. Had you or not a letter, with said note enclosed in it, and about to send the same to said Montgomery & Whiteside. at New York, when you met said Warner and proposed to get a certificate as before enquired?

Answer. I do recollect having written a letter to my brother, enclosing the note, and that I was about to send the same to New York when I met said Warner, and proposed to him that he should get a certificate of his responsibility.

23d cross interrogatory. Did you or not well understand that the J. H. Ormsbee signed to said certificate, was the signature of Josiah H. Ormsbee and not John H.; did you or not ask said Warner if he meant him who was formerly a dry goods merchant, when he told you he would get Mr. Ormsbee.

Answer. I do not recollect, it could not have been Jo, because I did not know which one signed it.

24th cross interrogatory. Did you or not state to said Montgomery & Whiteside, that in your opinion said Warner was good for $1,500; and did you or [not] tell said Warner that you had so told them, and wanted a certificate to corroborate yours?

Answer. Yes.

25th cross interrogatory. If you are acquainted with Josiah H. Ormsbee, what [was] his standing as a business man at the time he signed said certificate; was it or not that of a wholesale boot and shoe store on the Halsey estate near the post office; was his business, or not, that of a 'cordwainer;' was his business, or not, that of an obscure and unknown and inconsiderable man in the city, or was he otherwise; was or not his location one of the most public in the city?

Answer. I am acquainted, and was then acquainted, with Josiah H. Ormsbee; at the time that said certificate was obtained, his standing, as a business man, was good, so far as I knew; he was a wholesale and retail boot and shoe dealer; he did keep a store nearly opposite the post office, whether on the Halsey estate or not I do not know; I do not know that his business was that of a cordwainer; he kept a boot and shoe store; he was a man that was generally known, and his location was one of the most public in the city.

26th cross interrogatory. What had been said Josiah's business before he went into the boot and shoe business; was he or not a partner with a Mr. Read in the wholesale dry goods business?

Answer. He kept a wholesale dry goods store, and was a partner of Mr. Read.

27th cross interrogatory. Were or not the company of Read & Ormsbee as respectable a firm as any that now are, or have been, in your city, in your opinion?

Answer. It was a respectable firm, and they stood very high as merchants.

28th cross interrogatory. Was or not, in your opinion, Josiah H. Ormsbee, at the time he signed said certificate, in good mercantile standing and credit?

Answer. I know nothing to the contrary, and think that he was.

29th cross interrogatory. Was or not said stock ever transferred or conveyed by said Warner to said Montgomery & Whiteside, except conditionally to be held by you until Warner should determine whether he was satisfied with said lands?

Answer. It was never transferred; it was held by me until Warner should determine whether he was satisfied with said land.

30th cross interrogatory. Was there or not any necessity of a retransfer or reconveyance of the same from said Montgomery & Whiteside to Warner? After Warner returned from viewing said lands, did you or not do any thing more with said certificates than pass them to said Warner? Did you or not consult said Montgomery or Whiteside about redelivering them to said Warner? If so, when was said consultation? Had you or not any directions from said M. & Whiteside, about said certificates, before they left New York for Tennessee? If so, what were they? Have you or not ever had since any letters from either of their enquiry about what became of said stock? If so, what did they write? Did they or not ever disapprove of your having given it back to said Warner? If so, what did they say about it?

Answer. No.

31st cross interrogatory. If by your answers to 23, 24, 25, 26, 27, direct interrogatories, you pretend to have any knowledge of the transactions then enquired of, please state how you obtained that knowledge; and whether you are able to swear positively to any of these matters?

Answer. I have no knowledge of the transactions there enquired of.

32d cross interrogatory. If in answer to first part of 28 direct interrogatory you say yea, will you give the time, when and where it took place?

Answer. I have no knowledge upon the matter here enquired of.

33d cross interrogatory. Has or not said Daniels, and when, been to you in search of papers? If so, what papers did he enquire for? Did said Daniels or not state to you about his with Warner? Did he or not say he hoped every one would aid and assist him in getting case, as Warner was a 'rascal or old scoundrel,' or any thing of the kind? Did he or not say that the expense was no object with him, that he meant to spare no means in his defence? Did he or not wish you to leave your business, and go with him to hunt up testimony or some kind of evidence for him? Did he or not say to you any thing about 'not going on foot, but to take a carriage' to go upon his business, and that he would pay the expense? Did he or not enjoin upon your secrecy as to his calling upon you, and that you keep the same from said Warner? How many times has Daniels called upon you? Has or not Walter S. Burgess, Daniels' counsel, been to you to make enquiries in behalf of Daniels? Did either Daniels or Burgess make memoranda of what you said to them? What persuasive arguments did said Daniels or his said counsel make use of to induce you to leave your business and take a carriage, at their expense, to hunt up evidence for them?

Answer. Mr. Adams Daniels has been to me several times to enquire

what I knew about a contract between Warner & Montgomery & Whiteside, and asked me if I had the contract, and wanted to know what papers I had relating to the case; he said that he had a case with Warner in relation to his trying to get his farm back that was traded for granite stock; I do not recollect that he said that he hoped every one would aid and assist him in getting his case, as Warner was a rascal or old scoundrel, or any thing of the kind; or that the expense was no object with him, that he meant to spare no means in his defence; he did not wish me to leave my business and go with him to hunt up testimony or any kind of evidence for him; he wished me to go to my house, and look for the papers which he enquired about, and said that he would take a carriage and carry me up to my house; he asked me to say nothing about it; Daniels has called upon me two or three times, I think three times; Walter S. Burgess has been to me to make enquiries in behalf of Daniels; neither Burgess or Daniels made memoranda of what I said to them to my knowledge; Mr. Burgess said nothing to me about hunting up evidence, or going to look for papers; Mr. Daniels appeared anxious to get all the evidence that he could; he used no arguments in particular to induce me to leave my business, and take a carriage at his expense to go to my house to examine the papers, or hunt for them, except that he said that he would pay me for my trouble.

34th cross interrogatory. What, in your opinion, is now, or was when deeded to Warner, was the intrinsic value of said Tennessee land?

Answer. I have serious doubts about the title to that land; and, from what I have heard about the land, I do not think that it was then, or is now, of much value; I can buy similar land now in N. Y. for five cents an acre.

35th cross interrogatory. What, in your opinion, when said trade was made for said land, was the intrinsic value of said stock?

Answer. That it was of no value at all.

36th cross interrogatory. Did or not you know whether your opinion of said stock and land, at time of said trade between said Warner and Montgomery and Whiteside, varied from the opinion which said M. and W. had of the same?

Answer. I do not know.

37th cross interrogatory. Will you now bind yourself to give said Warner $500, for the title which he received of said land of said Montgomery & Whiteside? If nay, why will you not? If yea, when and where will you be ready to receive the deed and pay the $500? If you will not give that sum, what will you give? Please state what you will give, and when and where you will give, and when and where you receive the deed and pay the same? Did you not state to said Daniels or his counsel, Burgess, that you would not give $200 for the whole 9,000 acres? Do you or not adhere to the same opinion now?

Answer. I would not give Warner $500 for all the land he has got in Tennessee, or which he bought of Montgomery & Whiteside, taking the titles as he took them, because I doubt the title, and because I do not think that the lands are of any value; I will give one hundred dol-

lars for the whole tract, and run the risk of the title; and will receive the deed and pay the same at any time; I think it very probable that I told Mr. Daniels that I would not give $200 for the whole 9,000 acres, but I do not recollect that I did; I still adhere to the same opinion.

38th cross interrogatory. Was it or not, after Warner had seen said land, a subject of complaint on his part to said Montgomery & Whiteside, to your knowledge, that said land was not worth the $1,500 (paid in note) by the sum of $600, and that land lying by the side of that so sold could be purchased at said lower rate? And were there or not negotiations between said Warner and said M. & Whiteside, as to refunding to said Warner said sum of $600; or claims and negotiations to that effect?

Answer. I do not know.

39th cross interrogatory. Are you acquainted with the handwriting of said A. H. Montgomery? If yea, look at the letter here shown you marked "C," and say whether it is [his] handwriting and whether the signature thereto is his?

Answer. I am acquainted with his handwriting, but, as no letter has been produced and shewn to me, I cannot answer to the remainder of this interrogatory.

Additional direct interrogatory by F. W. Sawyer, esq., solicitor for defendants. They object to 27th, 28th, and from the 30th to 37th inclusive, of the cross interrogatories, as incompetent and irrelevant.

Additional direct to 34th cross, de bene esse.

If you have attempted to give your opinion of the value of the Tennessee land, or to say any thing about its value, please to state whether you know, as a matter of fact, any thing about it? Have you ever seen it; do you know anything about it that you have not learned from others?

Answer. I have never seen the land; all that I know about it I have learned from others.

Additional direct to 35th cross, de bene esse.

If you have attempted to testify as to the value of the C. L. Granite stock, please to state whether you know any thing about it; if yea, what do you know about it, how do you know it? Explain fully.

Answer. I know nothing about it except from various inquiries made about it in endeavoring to sell it, and what I have heard others say in speaking of it. I never examined the books of the company, nor talked with any of the officers of the company about it.

JOHN E. BROWN.

UNITED STATES OF AMERICA,
Massachusett district, ss:

On this twenty-sixth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused John E. Brown to come before me, in Providence, and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and

nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the several foregoing interrogatories and cross interrogatories by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, Freeman Foster, of Providence, in the State of Rhode Island, of the age of about forty-five years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age and occupation, and where do you reside?

Answer. I am forty-five years of age; I reside in the city of Providence, in the State of Rhode Island; I am a china, glass, and earthenware dealer.

2d interrogatory. Are you or not acquainted with Samuel Warner, of Providence, aforesaid; and how long have you been so acquainted?

Answer. I am acquainted with Samuel Warner, or rather I know him, as belonging to the Marine Society, to which I also belong; and have known him eight or nine years, I should think, but I am not certain how long.

3d interrogatory. Are you or not acquainted with J. H. Ormsbee, of said Providence, cordwainer? If so, state what his standing is as a business man, and what credit would naturally be attached to his recommendation of the responsibility of any one of your citizens.

Answer. I know said Ormsbee. At present his standing as a business man I should not think much of. I have not heard much about him, or known much about him, for several years. I do not know what credit would be attached to his recommendation of the responsibility of any of our citizens.

4th interrogatory. Are you or not acquainted with J. H. Ormsbee, agent of the Ætna Insurance Company? If yea, state what his standing is as a business man, and what credit would naturally be attached to his recommendation of any one of your citizens?

Answer. I am acquainted with J. H. Ormsbee, agent of the Ætna Insurance Company. His standing as a business man is good, and, for aught I know, as good as that of any man in the city; and I should suppose that as much credit would be attached to his recommendation of any one of our citizens as to the recommendation of any person in the place.

5th interrogatory. State whether or not said Warner ever came to you with the certificate of J. H. Ormsbee, certifying that he would take said Warner note, and pay for the same in goods, or any thing to that effect?

Answer. No. Warner brought to me a letter signed by J. H. Orms-

bee, which I understood to be a recommendation, or letter of credit, or something of that kind, certifying that, in his opinion, said Warner was worth fifteen hundred or two thousand dollars; and I recollect signing the same in the name of the firm to which I belonged, Whitaker and Foster.

6th interrogatory. If yea, which of said Ormsbees did you suppose the signature to be; whose did you afterwards learn it to be? Did or not said Warner tell you, or intimate, that the signature was the cordwainer's?

Answer. I supposed it to be the signature of Capt. John H. Ormsbee; I afterwards learned it to be the signature of Josiah H. Ormsbee. Warner did not tell me or intimate that the signature was that of Ormsbee, the cordwainer.

7th interrogatory. What did Mr. Warner tell you was the object of this certificate?

Answer. He said, I think, he was buying goods in New York, and wished such a recommendation of his standing or credit.

8th interrogatory. Did you unite with said Ormsbee in recommending said Warner?

Answer. I did.

9th interrogatory. Should you have united with him on said certificate, if you had known which Ormsbee was the signer.

Answer. I might have hesitated, but do not know whether I should or not have united with him in said certificate

10th interrogatory. Did you or not consider it an imposition upon you to get your signature under such circumstances?

Answer. No; I did not at that time.

11th interrogatory. Was or not said Ormsbee's standing such, that an application to him, for such a purpose, was fraudulent on its face? Would any man doing business, and seeing said certificate, have been likely to have thought of the said Ormsbee as the signer, unless duly notified; and must not said Warner have known it?

Answer. I do not know whether or not said Ormsbee's standing was such, that an application to him, for such a purpose, was fraudulent on its face. I do not think any man doing business, and seeing said certificate, would have been likely to have thought of the said Josiah H. Ormsbee as the signer, unless he had been apprised of it; whether or not said Warner must have known it, I cannot say.

12th interrogatory. State any other facts, within your knowledge, pertinent to the issue.

Answer. I cannot state any other facts, within my knowledge, pertinent to this issue, except that Warner came in once or twice to see my partner, Mr. Whitaker, who is a native of the place, and I had been residing here but a short time. Not finding Mr. Whitaker, he said perhaps I might do as well; and that Mr. Whitaker would, or had said he would, sign it. I then signed it.

Cross interrogatories propounded by J. P. Bishop, esquire, solicitor for Samuel Warner.

The plaintiff objects to the testimony of Freeman Foster, and the interrogatories propounded to him by the defendants, as wholly irrelevant.

1st cross interrogatory. If you say said Warner brought a certificate to you, signed by a Mr. J. H. Ormsbee, in answer to the fifth direct interrogatory, will you say whether you know, and are now able to swear positively which signed it, the 'Cordwainer,' or the agent of the Insurance Co.?

Answer. I went to Capt. John H. Ormsbee, about six months after, and asked him if he signed such a certificate, and he said he had not; that is all that I know about it.

2d cross interrogatory. If you do know, how did you acquire this knowledge?

Answer. As I have stated above, in last answer.

3d cross interrogatory. If you attempt to state the contents of said certificate, how do you retain the same in your memory for this length of time? Have you seen the certificate since; if so, when and where did you see it?

Answer. I have seen said certificate but once since; I do not remember when it was; it was brought to our counting-room by a German agent of a German house in New York; I do not think I read it at that time; I do not retain the same in my memory, but I have an impression of the substance of the paper which I thus signed, and which I have stated in my former answer; and that it amounted to a statement that, in our opinion, Warner was worth fifteen hundred or two thousand dollars.

4th cross interrogatory. Can you annex a copy of the same; or what you would be willing to swear contained every thing material?

Answer. No.

5th cross interrogatory. If you can, do so?

Answer. I cannot.

6th cross interrogatory. Did you sign the same certificate with said Ormsbee, or did you sign another?

Answer. The same.

7th cross interrogatory. If you signed another, who signed the same besides yourself?

Answer. I signed the same.

8th cross interrogatory. If you did not sign the same with said Ormsbee, was the one by you signed literally the same; was it of the same purport? If different, how did it differ?

Answer. I signed the same.

9th cross interrogatory. Were the facts, certified to in the paper you signed, strictly true, or otherwise?

Answer. I believed them to be strictly true.

10th cross interrogatory. Were you influenced to sign a certificate of

what was true, by seeing another man's certificate of the same; or did you certify it because you believed it true?

Answer. I was influenced, in some measure, by Ormsbee's signature; but still I had my own judgment about it. I did believe him to be worth fifteen hundred or two thousand dollars.

11th cross interrogatory. Would you sign a certificate of facts, regardless of the truth of them, because the agent of an Insurance Company had signed it, sooner than you would if he were a cobbler?

Answer. No.

12th cross interrogatory. If you answer the last interrogatory in the affirmative, please give the reason that would influence you. Is it not because you do not abide by the truth, and avoid falsehood from principle; but only as it may affect your associations and interests?

Answer. I have answered the last interrogatory in the negative.

13th cross interrogatory. If you answer the 11th cross interrogatory in the negative, why would it be an imposition upon you to get you to certify to the truth, even if a cobbler also certified to the *same* truth?

Answer. I do not think it would be an imposition upon me to get me to certify to the truth, even if a cobbler certified to the same truth.

14th cross interrogatory. By the 12th direct interrogatory you are required to 'state any other fact pertinent to this issue.' How do you know what the issue is in the case between the plaintiff and defendants? Or what facts will be pertinent to 'this issue?'

Answer. I do not.

15th cross interrogatory. Has or not said Daniels, or Walter S. Burgess, his counsel, called upon you in said Providence, within the last year? If so, what was his, or their business; what did he state to you about Warner's case against him and his defence? Please state fully and particularly all he said about the same.

Answer. Daniels has not; Walter S. Burgess has called upon me in Providence, within the last year, upon business of the estate of Nancy Carlile, he being administrator to the estate of said Nancy Carlile, and I being guardian to some of her grandchildren; he has never stated to me any thing about Warner's case against Daniels, or any person, nor his defence, nor any thing about any business of said Daniels, or said Warner, within the last year.

16th cross interrogatory. Did or not said Daniels engage or wish for your services in any way to assist in making out his defence?

Answer. I do not know Mr. Daniels, and I answer this interrogatory in the negative.

17th cross interrogatory. In what way did Daniels wish your assistance; by looking up testimony for him or otherwise?

Answer. He did not wish for my assistance; I do not know the man.

18th cross interrogatory. Have you or not had frequent interviews with said Daniels and others upon the subject of his defence against Warner's suit? If so, how many, and where; who else was present; did you go with Daniels to see his counsel? If so, did you then tell

your story concerning what you know about the case, and did you then and there, or at any other time or place, tell Daniels or said Burgess, or give him or them any written memorandum of what you could testify to?

Answer. No.

19th cross interrogatory. Did said Daniels or his said counsel, or not, take down in writing what you told him or his counsel you could say in his behalf; if you have given him or his counsel to understand that you could swear so and so for Daniels, would you consider it honorable to disappoint their expectations?

Answer. To the first branch of this interrogatory I answer no. To the latter branch of this enquiry I answer that I should not.

20th cross interrogatory. Have you or not any anxiety or desire to assist said Daniels in his defence, on account of a belief you may have received from his statement that he ought to succeed; have you spent your time with Daniels about his defence without pay or reward, or promise of it?

Answer. No. I do not know Mr. Daniels, or any thing about him, or about his case; and I never before this knew that he had a case, or was likely to have one, from him, or Mr. Burgess, or any one else; and when I came to give my testimony I was ignorant entirely of the purpose for which I was summoned.

21st cross interrogatory. Has Daniels or not ever paid you, or promised to pay you, for your trouble in assisting him in hunting up evidence for his defence; or has he said any thing about paying your trouble?

Answer. No. I have never been at any trouble in assisting him in hunting up evidence for his defence; and I do not know him, and he has never said any thing about paying for any trouble.

22d cross interrogatory. Has Daniels ever written any letters to you upon the subject? If so, annex the same, or true copy or copies.

Answer. Never.

23d cross interrogatory. Have you had communicated to you by said Daniels or any other one, either directly or indirectly, such information as gave you a general or particular idea of the interrogatories that would be propounded to you, or of the cross interrogatories that have been filed to be propounded to you, previous to your examination? If yea, who communicated the same?

Answer. No.

24th cross interrogatory. What was the standing of Josiah H. Ormsbee, of your city, at the time you signed said certificate for said Warner, as a man of integrity and a business man; what was and had been his business for years before that time; had he not been one of the firm of Read & Ormsbee, Read & Co., or Ormsbee & Co., or something of the kind, and a partner with one Read in wholesale dry goods business, in North Main street, Providence, and doing a large business; was said Josiah H. Ormsbee or not, at the time you signed said certificate, the owner of the stock, keeping a wholesale and retail shoe store, and doing business in said *South* Main street?

Answer. At or about that time he was a partner in the firm of Read & Ormsbee, and the said firm stood fair as business men and men of integrity. I am unable to say whether or not said firm was dissolved; it was dissolved about that time; I knew very little about said Ormsbee, and cannot say what his standing was at that time as a man of integrity or as a business man. His business before that time was that of a wholesale dealer in dry goods, and whether or not he had dissolved with Read before that time, I do not know, as I have before said; after he dissolved with Read he was engaged in the shoe business, I believe. When with Read, the firm of Read & Ormsbee did business in North Maine street, Providence, and were doing a fair business. I should not think they were doing a large business. Said Ormsbee at some time about that time kept a wholesale and retail boot and shoe store on South Maine street; but whether at the time I gave my signature as aforesaid, or not, I do not remember.

25th cross interrogatory. Was or not Josiah H. Ormsbee's business, at the time you signed said certificate, such as to entitle him to the appellation of a business man; or was he a 'cordwainer,' as termed in 3d direct interrogatory?

Answer. I should think his business was such as to entitle him to the appellation of a business man.

26th cross interrogatory. Had or not said Josiah, previous to the time last mentioned, being while in company with said Read, been in such business as would naturally give credit and consequence to his certificate of opinion, concerning any subject, to be used in New York or Boston?

Answer. I should not think he was known in New York or Boston much.

27th cross interrogatory. Do you know of any good reason why he should be called a 'cordwainer,' more than that John H. Ormsbee, the agent of the Insurance Company, should be so called; have you ever known either to make a shoe or boot? If so, where and when?

Answer. I have never known either to make a shoe or boot. The only reason why one should be called a cordwainer more than the other, known to me, is, that one of them kept a boot and shoe store, and the other never did, to my knowledge. I have heard, I think, that Josiah H. Ormsbee learned the trade of a shoemaker.

28th cross interrogatory. Can you or not now say, that you should not have signed said certificate, had you known the signature of J. H. Ormsbee to mean Josiah H. Ormsbee, and not John H. Ormsbee? If yea, will you give your reasons for preferring to associate with one rather than the other?

Answer. No.

29th cross interrogatory. What is now your [opinion] of the ability of said Warner to pay a just demand at the time you signed said certificate? Have you ever known him to refuse to pay any demand which he was in honor bound to pay? If so, when, and what?

Answer. I believe that said Warner was able to pay a just demand

against him, at that time, to the amount of fifteen hundred, or two thousand dollars. I have never known him to refuse to pay any demand which he was in honor bound to pay. He did owe our firm, I believe, a small amount; I am unable to say whether he has settled it or not.

30th cross interrogatory. Did or did not said Warner, when he came to you at the time you signed said certificate, at first show you the certificate of J. H. Ormsbee, and ask you to sign that with said Ormsbee? Or did he, without showing you said Ormsbee's certificate, or saying a word about it, ask you to certify such facts as would show your opinion of his ability to pay $1,500? If the latter, did you or not say to him, 'well, write what you want;' and did he or not then say, 'I don't want to write about myself, write and sign what you are willing to;' and did he or not then, for the first time, show you Ormsbee's certificate, and say, 'there, I want something like that from you, if you can give it?' And did you not, upon looking at said Ormsbee's certificate, say to said Warner, 'why not sign that,' or that you would prefer signing that? And did you not then sign the certificate below said Ormsbee's name? And will you now say upon your oath, said Warner ever asked you to sign the certificate of said Ormsbee? Did you or not consent to give a certificate of the same purport of the one you did sign, before said Warner showed Ormsbee's certificate to you?

Answer. He brought me the letter, or certificate, or whatever it may be called, signed by J. H. Ormsbee, and requested me to sign it. Nothing of the kind occurred, which is contained in the remainder of this interrogatory.

The defendants object to the plaintiff's cross interrogatories, from the eleventh to the twenty-third inclusive, and also to the 28th, 29th, and 30th, as incompetent and irrelevant.

FREEMAN FOSTER.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

On this twenty-sixth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Freeman Foster to come before me, in Providence, in the State of Rhode Island, and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commis'r.*

I, John H. Mason, of Providence, in the State of Rhode Island, of the age of about fifty-three years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your age and occupation, and where do you reside?

Answer. I am fifty-three years old; I reside in the city of Providence, in the State of Rhode Island. I have retired from mercantile, or drug business, and am now doing no business.

2d interrogatory. Are you or not acquainted with Samuel Warner, of Providence aforesaid, and how long have you been so acquainted?

Answer. I have known Captain Warner for twenty or twenty-five years.

3d interrogatory. Are you or not acquainted with J. H. Ormsbee, of said Providence, cordwainer? If yea, state what his standing is as a business man, and what credit would naturally be attached to his recommendation of the responsibility of any one of your citizens.

Answer. I am not, and never was acquainted with J. H. Ormsbee, of Providence, a cordwainer.

4th interrogatory. Are you or not acquainted with J. H. Ormsbee, agent of the Ætna Insurance Company? If yea, state what his standing is as a business man, and what credit would naturally be attached to his recommendation of any one of your citizens.

Answer. I am acquainted with J. H. Ormsbee, agent of the Ætna Insurance Company; his standing as a business man is good, and great credit would naturally be attached to his recommendation of any one of our citizens.

5th interrogatory. State whether or not said Warner ever came to you with the certificate of J. H. Ormsbee, certifying that he would take said Warner's note, and pay for the same in goods, or any thing to that effect?

Answer. No, he never did.

6th interrogatory. If yea, which of said Ormsbees did you suppose the signature to be? Whose did you afterward learn it to be? Did or not said Warner tell you, or intimate that the signature was the cordwainer's?

Answer. Warner came to my store and left a certificate, signed by J. H. Ormsbee, stating that, in his opinion, *that* Samuel Warner was worth fifteen hundred or two thousand dollars; whoever handed me the certificate, requested the signature of the firm to which I belonged, John H. Mason & Co. I immediately wrote upon it to this effect, that we concurred in the opinion of Mr. Ormsbee, as expressed in the certificate of said Ormsbee, as to the responsibility of said Warner, and signed the name of the firm. I supposed it to be the signature of John H. Ormsbee. I afterwards learned it to be the signature of J. H. Ormsbee, who kept a shoe store near the post office; said Warner did not tell or intimate to me that the signature was the cordwainer's.

7th interrogatory. What did Mr. Warner tell you was the object of this certificate?

Answer. I do not recollect particularly, but I think he wanted to get credit in New York.

8th interrogatory. Did you unite with the said Ormsbee in recommending said Warner?

Answer. I can't say that I did understandingly; I signed the same certificate that he did.

9th interrogatory. Should you have united with him on said certificate, if you had known which Ormsbee was the signer?

Answer. I think if I had known which Ormsbee had signed it, that I should have been put into such a train of thought that I should not have signed any certificate.

10th interrogatory. Did you or not consider it an imposition upon you to get your signature under such circumstances?

Answer. I did not at the time.

11th interrogatory. Was or not said Ormsbee's standing such, that an application to him for such a purpose was fraudulent on its face? Would any man, doing business and seeing said certificate, have been likely to have thought of the said Ormsbee as the signer, unless duly notified; and must not said Warner have known it?

Answer. To the first clause of this interrogatory, I answer that I do not know; to the latter clause of the interrogatory, I answer that I do not think any man, doing business and seeing said certificate, would have been likely to have thought of the said Ormsbee as the signer, unless duly notified; whether or not said Warner must have known it, I cannot say.

12th interrogatory. State any other facts within your knowledge pertinent to this issue.

Answer. Some few months afterwards a foreigner, a German, came into my store, and asked me who I supposed I signed under, and I think shewed me the certificate, but I am not certain of th s, and I replied, John H. Ormsbee, of course; he said it was not the signature of John H. Ormsbee, but of J. H. Ormsbee, who kept a shoe store opposite the post office; I was so much surprised that I called on John H. Ormsbee, and asked him if he had signed such a certificate, and he said he had not; I know no other fact that I suppose would be pertinent to this issue.

The plaintiff objects to the testimony of John H. Mason, and the interrogatories propounded to him, by the defendants, as wholly irrelevant.

Cross interrogatories propounded by the solicitor of Samuel Warner.

1st cross interrogatory. If you say said Warner brought a certificate to you, signed by a Mr. J. H. Ormsbee, in answer to 5th direct interrogatory, will you say whether you know, and are now able to swear positively which signed it, the 'cordwainer,' or the agent of the insurance company?

Answer. I am not able to swear positively which signed it; I did not see the signature made.

2d cross interrogatory. If you do know, how did you acquire this knowledge?

Answer. I do not know, except that John H. Ormsbee has told me that he did not sign it.

3d cross interrogatory. If you attempt to state the contents of said certificate, how do you retain the same in your memory for this length of time? Have you seen the certificate since? If so, when? Where did you see it?

Answer. I am not able to say when I have seen said certificate since, and am not able to swear that I have seen it since at all; but think I saw it about six years ago, when the German called upon me, as I have before stated, at my store. I do not know any particular reason why I have retained in my memory the contents of said certificate for so long a time.

4th cross interrogatory. Can you annex a copy of the same; or what you would be willing to swear contained every thing material?

Answer. I cannot.

5th cross interrogatory. If you can, do so.

Answer. I cannot.

6th cross interrogatory. Did you sign the same certificate with said Ormsbee, or did you sign another?

Answer. I signed with Ormsbee.

7th cross interrogatory. If you signed another, who signed the same besides yourself?

Answer. I signed the same.

8th cross interrogatory. If you did not sign the same with said Ormsbee, was the one by you signed literally the same? Was it of the same purport? If different, how did it differ?

Answer. I signed the same.

9th cross interrogatory. Were the facts certified to in the paper you signed, strictly true or otherwise?

Answer. Strictly true.

10th cross interrogatory. Were you influenced to sign a certificate of what was true, by seeing another man's certificate of the same? Or did you certify it because you believed it true?

Answer. I signed the certificate because I believed it to be true.

11th cross interrogatory. Would you sign a certificate of facts, regardless of the truth of them, because the agent of an insurance company had signed it, sooner than you would if he were a cobbler?

Answer. No.

12th cross interrogatory. If you answer the last interrogatory in the affirmative, please give the reason that would influence you? Is it not because you do not abide by the truth and avoid falsehood from principle, but only as it may affect your associations and interests?

Answer. I have answered the last interrogatory in the negative.

13th cross interrogatory. If you answer the 11th cross interrogatory in the negative, why would it be an imposition upon you to get you to certify to the truth, even if a cobbler *also* certified to the same truth?

Answer. It would not have been an imposition upon me to get me to certify to the truth even if a cobbler also certified to the same truth.

14th cross interrogatory. By 12th direct interrogatory, you are required to 'state any other fact pertinent to this issue; how do you know what the issue is, in the case between the plaintiff and defendants; or what facts will be pertinent to this issue?

Answer. I do not.

15th cross interrogatory. Has or not said Daniels or Walter L. Burgess, his counsel, called upon you in said Providence, within the last year? If so, what was his or their business; what did he state to you about Warner's case against him and his defence? Please state fully and particularly all he said about the same.

Answer. No.

16th cross interrogatory. Did or not said D niels engage, or wish for, your services in any way to assist him in making out his defence?

Answer. No; I never saw Mr. Daniels, and do not know him; and no one has called on me in his behalf.

17th cross interrogatory. In what way did Daniels wish your assistance; by looking up testimony or otherways?

Answer. I do not know that Daniels has, or does wish my assistance.

18th cross interrogatory. Have you or not had frequent interviews with said Daniels and others, upon the subject of his defence against Warner's suit? If so, how many, and where; who else was present; did you go with Daniels to see his counsel? If so, did you there tell your story concerning what you knew about the case, and did you then and there, or at any other time or place, tell Daniels or said Burgess, or give him, or them, any written memorandum of what you could testify to?

Answer. No.

19th cross interrogatory. Did said Daniels or his said counsel take down in writing what you told him, or his counsel [what] you could say in his behalf? If you have given him or his counsel to understand that you could swear so and so, or Daniels, would you consider it honorable to disappoint their expectations?

Answer. No. And I have not given him or his counsel to understand that I could swear to any thing; if I had, I should not consider it honorable to disappoint his expectations.

20th cross interrogatory. Have you or not any anxiety and desire to assist said Daniels in his defence, on account of a belief you may have received from his statement that he ought to succeed; have you spent your time with Daniels about his defence, without pay, or reward, or promise of it?

Answer. I have not.

21st cross interrogatory. Has Daniels or not ever paid you, or promised to pay you for your trouble in assisting him in hunting up evidence for his defence; or has he said any thing about paying for your trouble?

Answer. He has not.

22d cross interrogatory. Has Daniels ever written any letters to you upon the subject? If so, annex the same, or a true copy *or copies*.

Answer. He has not.

23d cross interrogatory. Have you had communicated to you by said Daniels, or any other one, either directly or indirectly, such information as gave you a general or particular idea of the interrogatories that would be propounded to you, or of the cross interrogatories that have been filed to be propounded to you previous to your examination? If yea, who communicated the same?

Answer. No.

24th cross interrogatory. What was the standing of Josiah H. Ormsbee of your city, at the time you signed said certificate for said Warner, as a man of integrity, and as a business man; what was, and had been, his business for years before that time; had he not been one of the firm of Read & Ormsbee, Read & Co., or Ormsbee & Co., or something of the kind, and a partner with one Read, in wholesale dry goods business, in North Main street, Providence, and *do* a large business; was said Josiah H. Ormsbee or not, at the time you signed said certificate, the owner of the stock, keeping a wholesale and retail boot and shoe store, and doing business as such, in *South* Main street?

Answer I knew nothing about Josiah H. Ormsbee, or his standing; and I do not know what had been his business, or with whom connected, or where he had done business.

25th cross interrogatory. Was or not Josiah H. Ormsbee's business, at the time you signed said certificate, such as to entitle him to the appellation of a business man; or was he a 'cordwainer,' as termed in 3d direct interrogatory?

Answer. I do not know.

26th [cross] interrogatory. Had or not said Josiah, previous to the time last mentioned, being while in company with said Read, been in such business as would naturally give credit and consequence to his certificate of opinion, concerning any subject, to be used in New York or Boston?

Answer. I know nothing about it.

27th [cross] interrogatory. Do you know of any good reason why he should be called a 'cordwainer,' more than that John H. Ormsbee, the agent of the Insurance Company, should be so called; have you ever known either to make a shoe or boot? If so, when and where?

Answer. No.

28th [cross] interrogatory. Can you or not now say, that you should not have signed such certificate, had you not known the signature of J. H. Ormsbee to mean Josiah H. Ormsbee, and not John H. Ormsbee? If yea, will you give your reasons for preferring to associate with one rather than the other?

Answer. I cannot.

29th [cross] interrogatory. What is now your opinion of the ability of said Warner to pay a just demand at the time you signed said certificate; have you ever known him to refuse to pay any demand which he was in honor bound to pay? If so, state the when and what?

Answer. It would not have been an imposition upon me to get me to certify to the truth even if a cobbler also certified to the same truth.

14th cross interrogatory. By 12th direct interrogatory, you are required to 'state any other fact pertinent to this issue; how do you know what the issue is, in the case between the plaintiff and defendants; or what facts will be pertinent to this issue?

Answer. I do not.

15th cross interrogatory. Has or not said Daniels or Walter L. Burgess, his counsel, called upon you in said Providence, within the last year? If so, what was his or their business; what did he state to you about Warner's case against him and his defence? Please state fully and particularly all he said about the same.

Answer. No.

16th cross interrogatory. Did or not said D niels engage, or wish for, your services in any way to assist him in making out his defence?

Answer. No; I never saw Mr. Daniels, and do not know him; and no one has called on me in his behalf.

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Answer. I do not know that Daniels has, or does wish my assistance.

18th cross interrogatory. Have you or not had frequent interviews with said Daniels and others, upon the subject of his defence against Warner's suit? If so, how many, and where; who else was present; did you go with Daniels to see his counsel? If so, did you there tell your story concerning what you knew about the case, and did you then and there, or at any other time or place, tell Daniels or said Burgess, or give him, or them, any written memorandum of what you could testify to?

Answer. No.

19th cross interrogatory. Did said Daniels or his said counsel take down in writing what you told him, or his counsel [what] you could say in his behalf? If you have given him or his counsel to understand that you could swear so and so, or Daniels, would you consider it honorable to disappoint their expectations?

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Answer. I have not.

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Answer. He has not.

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23d cross interrogatory. Have you had communicated to you by said Daniels, or any other one, either directly or indirectly, such information as gave you a general or particular idea of the interrogatories that would be propounded to you, or of the cross interrogatories that have been filed to be propounded to you previous to your examination? If yea, who communicated the same?

Answer. No.

24th cross interrogatory. What was the standing of Josiah H. Ormsbee of your city, at the time you signed said certificate for said Warner, as a man of integrity, and as a business man; what was, and had been, his business for years before that time; had he not been one of the firm of Read & Ormsbee, Read & Co., or Ormsbee & Co., or something of the kind, and a partner with one Read, in wholesale dry goods business, in North Main street, Providence, and *do* a large business; was said Josiah H. Ormsbee or not, at the time you signed said certificate, the owner of the stock, keeping a wholesale and retail boot and shoe store, and doing business as such, in *South* Main street?

Answer I knew nothing about Josiah H. Ormsbee, or his standing; and I do not know what had been his business, or with whom connected, or where he had done business.

25th cross interrogatory. Was or not Josiah H. Ormsbee's business, at the time you signed said certificate, such as to entitle him to the appellation of a business man; or was he a 'cordwainer,' as termed in 3d direct interrogatory?

Answer. I do not know.

26th [cross] interrogatory. Had or not said Josiah, previous to the time last mentioned, being while in company with said Read, been in such business as would naturally give credit and consequence to his certificate of opinion, concerning any subject, to be used in New York or Boston?

Answer. I know nothing about it.

27th [cross] interrogatory. Do you know of any good reason why he should be called a 'cordwainer,' more than that John H. Ormsbee, the agent of the Insurance Company, should be so called; have you ever known either to make a shoe or boot? If so, when and where?

Answer. No.

28th [cross] interrogatory. Can you or not now say, that you should not have signed such certificate, had you not known the signature of J. H. Ormsbee to mean Josiah H. Ormsbee, and not John H. Ormsbee? If yea, will you give your reasons for preferring to associate with one rather than the other?

Answer. I cannot.

29th [cross] interrogatory. What is now your opinion of the ability of said Warner to pay a just demand at the time you signed said certificate; have you ever known him to refuse to pay any demand which he was in honor bound to pay? If so, state the when and what?

Answer. I think he was able to the amount of fifteen hundred or two thousand dollars. I have never known him to refuse to pay any demand that he was in honor bound to pay.

30th [cross] interrogatory. Did or did not said Warner, when he came to you at the time you signed said certificate, at first show you the certificate of J. H. Ormsbee, and ask you to sign *that with* said Ormsbee, or did he, without showing you said Ormsbee's certificate, or saying a word about it, ask you to certify such facts as would show your opinion of his ability to pay $1500? If the latter, did you not say to him 'well, write what you want?' And did he or not then say, 'I don't want to write about myself; write and sign what you are willing to?' And did he or not then, for the first time, show you Ormsbee's certificate, and say, 'there, I want something like that from you, if you can give it;' and did you not then, upon looking at said Ormsbee's certificate, say to said Warner, 'why not sign that,' or that you would prefer signing that; and did you not then sign the certificate below said Ormsbee's name; and will you now say, upon your oath, said Warner ever asked you to sign the certificate of said Ormsbee; did you or not consent to give a certificate of the same purport of the one you did sign before said Warner showed Ormsbee's certificate to you?

Answer. I signed the certificate, as I have before said. The certificate was brought to me signed by J. H. Ormsbee, and I was asked to sign it; and I do not recollect any farther conversation about it. Whether or not Warner or some other person brought it to me and requested me to sign it, I am not able to say, as I have before stated.

The defendants object to the plaintiff's cross interrogatories from the eleventh to the twenty-third inclusive, and also to the twenty-eighth, twenty-ninth, and thirtieth, as incompetent and irrelevant.

JOHN H. MASON.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

On this twenty-sixth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused John H. Mason to come before me, in Providence, in the State of Rhode Island; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, Laban Adams, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, of the age of about 60 years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by Frederic W. Sawyer, esquire, solicitor for Adams Daniels and J. J. Fales.

1st interrogatory. What is your age, occupation, and where do you reside?

Answer. I am sixty years old; I have been an innholder; I am now engaged in no other business but building; and I reside in the city of Boston.

2d interrogatory. Do you or not know Samuel Warner and Adams Daniels?

Answer. I know Adams Daniels, and I know said Warner, as coming to my public house in Boston—I think it was Nov. 25, 1836.

3d interrogatory. Did or not Adams Daniels board with you in 1836, and if so, where? Was you or not then landlord of the Lamb Tavern?

Answer. He did board with me at that time at the Lamb Tavern, in Boston, which house I then kept.

4th interrogatory. Did or not Samuel Warner put up at your house about that time; had he or not ever put up there before?

Answer. Samuel Warner put up at my house at that time. I do not remember that he ever put up at my house before.

5th interrogatory. Did he or not say to Daniels at that time that he had come down to investigate the value of his stock, and to trade his farm for it?

Answer. I do not recollect particularly what was said, nor the words enquired of. There was conversation about a trade of Warner's farm for stock of Daniels', called granite stock.

6th interrogatory. State what he did say to Daniels—if any thing, about the Cleft Ledge Granite stock and his farm.

Answer. After he first came into my house, and had conversed with Daniels about the trade, he went out, and was gone a number of hours, (perhaps three or four hours,) and returned, and on his return said to Daniels that he had satisfied himself about the stock, and was ready to trade, if they could agree; and I heard him say that he wanted to dispose of his farm for that stock.

7th interrogatory. What reply did Daniels make?

Answer. Daniels replied that he would trade, but that he should not do any better than he had offered him. I did not hear the terms.

8th interrogatory. Did or not said Warner enquire of you where he could find certain members of said C. L. G. Co., and who?

Answer. I do not recollect.

9th interrogatory. Was or was not Warner at your house several days before you heard any direct proposition to trade between Warner and Daniels?

Answer. He was at my house several days; but at what time during his stay the proposition to trade between Warner and Daniels was made that I have testified to, I do not recollect. He appeared anxious to trade; and several times there were conversations between Warner and Daniels about the trade.

10th interrogatory. Did you or did you not hear Warner, after he

had been at your house several days, tell Daniels that he had fully satisfied himself about the value of the stock, and was ready to trade, if he and Daniels could agree about the value of the farm?

Answer. I did hear Warner say to Daniels that he had fully satisfied himself about the value of the stock, and that he was ready to trade if he and Daniels could agree about the value of the farm; but how long he had been at my house I do not recollect.

11th interrogatory. State fully and distinctly what you heard Warner say to Daniels about the inquiries he had made about the Cleft Ledge Granite stock; about its value; who he had seen and conversed with about it; and all you know to those points.

Answer. I do not recollect that I heard Warner say to Daniels who he had seen or conversed with about the Cleft Ledge Granite stock, or any thing about its value. In the course of the conversation, I heard him represent it as fancy stock.

12th interrogatory. How near did Warner and Daniels come to trading?

Answer. I heard them say that they came within one hundred and fifty dollars of a trade.

13th interrogatory. Did or not Warner and Daniels both refuse to yield; and did or not said Warner take his carriage, and leave ostensibly for home?

Answer. Warner said to Mr. Daniels, if he could not trade with him, that he must go to Brighton, and buy some stock; and then took his horse and carriage, and he and Daniels went away together. Daniels said he had made him, Warner, a good offer, and he would not do any better, in answer to a suggestion made to him by me, that they had come so near to trading that they ought to trade.

14th interrogatory. State fully and particularly what took place between Warner and Daniels, if any thing, on the day that Warner first proposed to go home without trading; state what he and Daniels said; whether or not said Warner left your house ostensibly for home; whether or not he returned, and what took place after that; what, if any thing, Warner told you after that about the matter?

Answer. Warner and Daniels left my house in a chaise together for the purpose, as they said, of going to Brighton. On the same evening they returned; took a pen and ink, and went into a room by themselves; I heard no conversation between them; and Warner has not since that talked with me or in my hearing about the matter. This is all that I can say in answer to this interrogatory.

15th interrogatory. What, if any thing, did Warner say about the stock being fancy stock? State what he said on that point.

Answer. In the course of the conversation, he represented the stock as being fancy stock, uncertain property; I do not recollect particularly the words he used.

16th interrogatory. Do you know, or can you set forth, any other matter or things which may be a benefit or advantage to the parties at issue in this cause, or either of them, or may be material to the subject

of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I cannot.

Cross interrogatories proposed by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st cross interrogatory. If, in answer to 2d direct interrogatory of defendant, you state that you do know Samuel Warner, as inquired of, please state when and where you first became acquainted with him; whether you are intimately acquainted with him? Is or not your acquaintance (if you have any) very limited; would you or not know said Warner at this time at meeting him? If so, will you give a complete description of his person; his age; height; size of his person, as to being corpulent or spare; his physiognomy; his complexion; color of his hair; his eyes? Please state precisely, or say why you do not.

Answer. I first knew him when he came to my house, Nov. 25, 1836, I think; I am not much acquainted with him; I have not seen him since he left my house, at the time mentioned in my former answer, to know him; I saw him only occasionally while he was at my house; it would be very uncertain whether I should know him now, if I should see him; I might recollect that I had seen him, but might not know him to be Warner; I am no physiognomist or phrenologist; I observed no deformity about him, nor nothing peculiar, and cannot give a description particularly of his person; it is my impression that he was then from thirty-five to fifty-five years of age; about a middling height; of the two, spare, more spare than corpulent; not the most prepossessing profile; I should think of rather a light complexion; not dark hair; I cannot tell the color of his eyes; so long time has elapsed, and I am in the habit of seeing so many people daily, that I should not be likely to remember the above particulars in his appearance, unless there was something peculiar.

2d cross interrogatory. If you do distinctly recollect such a man as you describe said Warner to be, puting up at your house in Boston, in 1836, will you state what causes you to remember this particular circumstance, which took place nine years ago? Do you now distinctly recollect his dress? Had he on a straight-bodied coat or frock coat? What was his overcoat? Was it a surtout, wrapper, or common overcoat? Was there any thing peculiar in other parts of his dress? If so, what? Please state precisely, or why you do not.

Answer. The reason of my recollecting what I have stated is, that I was well acquainted with Daniels, and he was boarding at my house at the time; and I heard considerable conversation about the granite stock, and Warner expressed and manifested a great deal of anxiety to dispose of his farm; I do not recollect, in particular, how Warner was dressed; there was nothing that I recollect peculiar in his dress; it more indicated a farmer than a professional man.

3d cross interrogatory. If you were a landlord, and said Warner and said Daniels boarded with you in 1836, how long did each board with

you? When did each commence and leave off their boarding with you? How much did Warner pay you for the time he was with you? Please state the amount precisely; please state the time or times with precision, or state why you do or cannot.

This question is objected to.

Answer. Daniels boarded with me, on and off, a number of months, perhaps a year, perhaps years, I cannot recollect how long; I do not recollect when he commenced to board with me, nor when he left off. Warner, I think, came to my house Nov. 25, 1836, and on Monday morning after left for Brighton, and paid up his board to that time, I think about four dollars and fifty cents; returned at evening of the same day, and staid till the next morning, when he left, and paid me for his board, I think one dollar and twelve cents, as appears by my books; and he has never boarded with me since; I have not my books to refer to at this time, and cannot state particularly when Daniels came or left; I expected to be enquired of in relation to the board of Warner, and examined my books in relation to his board before I came to testify.

4th cross interrogatory. How did said Warner come to your house? By stage, railroad, steamboat, on foot, on horseback, with horse and carriage? If in a stage, what stage? If by railroad or boat, what or which, and from what place? If on foot, had he or not a cane? Had he any bundle with him? If yea, describe the cane and bundle; if with a horse, or horse and carriage, describe them minutely; the color of the horse, color of the carriage, size and kind of horse; was he fat, showy, and valuable; was he the ; had the horse a switch tail, or short square dock? Was the carriage a chaise, gig, carryall, covered wagon, open wagon?

This question objected to.

Answer. Warner came to my house in a horse and carriage, a chaise, I think; the horse and chaise were of an ordinary description. I do not recollect the particulars, as to color of the horse or carriage, nor size or kind of horse. I am not in the habit of taking minutes of the particulars of horses and carriages that put up at my house; I cannot answer this question more minutely.

5th cross interrogatory. How long since you first commenced keeping a public house? What has been the average number of boarders and lodgers who put up at your house?

This question is objected to.

Answer. I commenced keeping public house March 1st, 1820. The average number of boarders and lodgers that put up at my house I am unable to state; sometimes one number and sometimes another; it would be difficult to ascertain without considerable calculation.

6th cross interrogatory. What was the number of those stopping at your house in Nov., 1836? How many were there at the time you say Warner was?

This question is objected to.

Answer. I cannot tell; perhaps forty or fifty.

7th cross interrogatory. What other transient man was there at the

same time Warner was? State as many such as you are now willing to be positive were there at the same time, from your recollection of the fact, other than your steady boarders? Was Joseph J. Fales often in and out your house about that time with said Warner and Daniels? Do you or not know that said Fales, said Daniels, and a Mr. Thompson, or two or three Messrs. Thompsons, were there contriving and managing to effect a trade with said Warner for granite stock?

This question objected to.

Answer. I cannot state, without referring to my books, what transient man or persons were there at the same time Warner was. I do not recollect seeing Joseph J. Fales at my house about that time, or at any time with said Warner and Daniels. I do not know that said Fales and Daniels, and a Mr. Thompson, or two or three Messrs. Thompsons, or any or either of them, or any such persons, were at my house at the time Warner was there. Such persons might have been there and I not have known it, or recollected it.

8th cross interrogatory. Do you undertake to state, at this length of time, the precise language used either by said Warner or said Daniels; or is what you state a mere impression you now entertain of what you believe was the purport of what was said by each?

Answer. I do recollect hearing Warner say that he had satisfied himself about the granite stock, and that he was ready to trade if they could agree, directing his conversation to Daniels; and I think that language was used, or language to that purport; and also the language which I have before stated, or of that import.

9th cross interrogatory. If you do now recollect *the precise* words used by each, how have you retained *those* words so distinct from so many other conversations you must have heard that time, and since, from so great number of persons at your house?

Answer. I do not affirm that I recollect the precise words used by each.

10th cross interrogatory. If you cannot answer from your recollection all contained in cross interrogatories 1, 2, 3, 4, 7, fully and distinctly, why can you not as well recollect those as the precise words used?

Answer. I cannot recollect the precise words used.

11th cross interrogatory. Can you recollect other instances where you are willing to be positive of the precise words used in a conversation between any other individuals in which you was not personally interested nine years ago? If so, give an instance; who the individuals; what were their precise words?

This question is objected to.

Answer. I recollect hearing Daniels say, previous to the time of the trading between Warner and Daniels, that "Doctor Jackson had analyzed the rock, and it contained feldspar and mica."

12th cross interrogatory. Have you had any conversation with said Daniels, or with Frederic W. Sawyer, esquire, or any one else; if so, who else, concerning said Warner, or what said Warner and Daniels

said, in November, 1836. When was said conversation with Daniels, &c.? Where was it; who introduced the subject; what was said by the person in the first instance; could you, when the subject was first spoken of, clearly recollect what you now can? If not, what brought it to your mind? Have you or not kept revolving the subject in your mind since November, 1836? If yea, what caused you to do so? Did you or not take more interest in said Daniels' affairs than in your other boarders? If yea, did take more notice of what was said and done on the enquired about than converse with you and with persons in your then situation? Was not your attention more attracted to the subject from your knowledge or belief of the worthlessness of said Cleft Ledge stock; was it or not because you then believed that, from your knowledge of Daniels and said stock, Warner was about to part with his farm for nothing of value?

Answer. I do not know F. W. Sawyer, esquire. I have been asked by Daniels what I recollected about the conversation between him and Warner in November, 1836, at my farm in West Roxbury, after Warner had commenced a suit against him, as Daniels told me. I think it was about three years ago, Mr. Daniels first introduced the subject. I think he said he had filed a bill in equity against him, and he wanted to prove the circumstances; that so long a time had elapsed that it was very unfavorable for him; that Warner had let it alone till it was almost outlawed, and then filed a bill in equity. When it was first proposed I could not recollect what I now can. I thought upon the subject afterwards, and referred to my books, which brought it to my mind. I had not thought of the subject, that I recollect, from the time of the trade down to the time that Daniels spoke to me about it. I did not take any more interest in Daniels' affairs than in the affairs of my other boarders, with whom I had been as long acquainted as with him. I knew nothing about the worth of the Cleft Ledge stock, whether valuable or worthless; Daniels called it valuable, and Warner doubted it, I inferred from the conversation between them. I did not know or believe whether or not said Warner was about to part with his farm for nothing of value; I had no reason to doubt, and had no suspicion that said Warner was about to part with his farm without receiving a full equivalent.

13th cross interrogatory. Do you believe an ordinary business transaction what took [place] in your public house, with the amount of business you then had upon your mind, would have impressed any word said by the parties upon your memory so that with safety you could repeat the same nine years afterwards verbatim?

Answer. I do not.

14th cross interrogatory. Has or not said Daniels or said Sawyer directy or indirectly communicated to you what interrogatories would be put to you or any other witness, at any time previous to your examination? Has any other person done so; who; what has been said to you upon the subject of your testifying in the case?

Answer. Mr. Sawyer I do not know. Mr. Daniels has stated to me

upon what points I should be examined; and has informed me of some of the interrogatories that have been put to me, but perhaps not exactly in the same words; he has not, nor has any one else informed me what interrogatories would be put to any other witness; no other person has ever communicated what interrogatories would be put to me, previous to my examination, either directly or indirectly.

Nothing more has been said to me upon the subject of my testifying in this case, except what I have above stated.

15th cross interrogatory. Do you say, upon your oath, you have had no help from said Daniels, to assist you in refreshing your mind as to when said Warner was [at] your house, and what took place there, &c., &c.? If you have refreshed your mind in any way, how; by whose assistance; how did they assist you?

Answer. Said Daniels has named over circumstances to bring the subject to my recollection; and I have refreshed my mind by referring to my books; I have not been assisted in any other manner, or by any other person.

16th cross interrogatory. Has not said Daniels gone and told what said Warner said to him, and what he said to Warner, at such times? Did you not state to him, in substance, that you had no recollection of such conversation? Did he not state the same over and over, and press upon you to try to recollect what was said? Did he not say you could not have forgotten it; you must remember it, and could bring it to your mind if you would reflect upon the subject; what did you reply to him?

Answer. I think he might have asked me if I recollected such and such remarks; I stated to him, when he first spoke to me about it, that I was lost as to any recollection of Warner, or about the trade; but in a few minutes, upon reflection, circumstances respecting Warner, and his trading, came fresh to my mind. Mr. Daniels never used the language to me which is contained in this interrogatory; he asked me to try to recollect the circumstances; I told him I would try to recollect about it.

17th cross interrogatory. Did you or not ever hear said Daniels, or Joseph J. Fales, have any conversation with any other person about Cleft Ledge Granite stock, or about eastern lands; with whom was it; what did they say; what was replied?

This question is objected to.

Answer. I think I may have heard conversation with other persons about granite stock, and eastern lands, but I cannot recollect with whom, or what was said; but not about the trade with Warner.

18th cross interrogatory. What (if any) thing have you ever heard Daniels say about the value of his Cleft Ledge stock; what did he say after he had traded with Warner, and Warner had gone?

Answer. I never heard Daniels say any thing about the value of his Cleft Ledge stock that I remember, before or after the trade.

19th cross interrogatory. What was the principal or chief business of Daniels and said Fales, during the years of 1835 and 1836; were they

or not actively engaged in negotiations of eastern lands, and such stocks as the Cleft Ledge?

This question objected to.

Answer. I know nothing about the business of said Fales; Daniels was at some [time] engaged in some eastern land negotiations, but I cannot recollect at what time; I do not know of his having any thing to do with any other stock than the stock that he traded with Warner.

The defendants object to the 3d, 4th, 5th, 6th, 7th, 11th, 16th, and 18th cross interrogatories, as incompetent, impertinent, and irrelevant.

LABAN ADAMS.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this twenty-eighth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Laban Adams to come before me, in Roxbury, in the county of Norfolk, in said district; and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, George Odiorne, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, of the age of about eighty years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, namely:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. What is your occupation, and how long have you resided in Boston?

Answer. I am a merchant, and have resided in Boston fifty years.

2d interrogatory. Was you or not, in the year 1836, President of the Cleft Ledge Granite Company?

Answer. I think I was; I was at one time President of the Cleft Ledge Granite Company in New Hampshire; but am not sure of the year.

3d interrogatory. At what time did you become connected with said company? Was you or not sufficiently acquainted with the affairs of said company in the fall of 1836, to state pretty fully the history of the origin and formation of said company?

Answer. I was connected with the company, and became first connected with it in the summer of the same year in which I was elected president; and I was at that time unacquainted with the history, or with those connected with the company, otherwise than I was informed; I

never saw the ledge; I was acquainted with the affairs of the company in the fall of 1836, as they then were; the books were at Durham, and I had never seen them, nor abstracts from them; and I knew nothing what was contained in the books, except as I was informed by the agents and clerk; I very soon found that the company was much in debt, and embarrassed with debts.

4th interrogatory. Did you or not then know who the company bought the ledge of; how much they gave for it; how they had promised to pay for it, and what the company were then doing in the way of operating?

Answer. I do not know who the company bought the ledge of, nor how much they gave for it; and I do not now remember how they had promised to pay for it; I probably at that time knew all these circumstances; not from my own knowledge, however, but from what I had been told by the clerk and agents.

I then understood that they had built a long wharf, and a blacksmith's shop, and carried on the farm which contained, I think, sixty acres; and were opening the quarry and getting out stones; they had made a contract with the navy agent at Portsmouth to furnish stone for a wharf, or store, or both, at the navy yard at Portsmouth; not having confidence in their agent, they employed Col. Bates, of Weymouth, to go to Durham, and take charge of getting out stone; and take the whole charge of getting out the stone, and shipping it to Portsmouth.

5th interrogatory. Do you mean to say that you do not know who the Cleft Ledge Granite Company bought the ledge of, or that you do not know who the Thompsons and Fales bought the ledge of?

Answer. I was not appointed president until after the company had begun their operations, and did not then know of whom the Cleft Ledge Granite Company, or the Thompsons or Fales bought the ledge, of my own knowledge; at the time that Thompson and Fales transferred the property to the company, I saw and examined the deed, and detected a material error in it, which was corrected; and I now remember that the company, when the deed was executed to them, gave their notes, two or three of them, for five thousand dollars each, payable at a future day; to whom the notes were given I do not recollect.

6th interrogatory. Was you present when the Cleft Ledge Granite Company was organized? Who was its first president? Did you or not act as its first president, and sign such papers as were needed in making the first transfer of the property to the company?

Answer. I am not certain whether or not I was present at the time I was elected president, or whether I was notified of my election afterwards; I was its first president; the ledge was not paid for at the time of the conveyance to the company, but company notes were given in payment; and I have no doubt that, as president of said company, I signed said notes, but I do not remember that I did sign such notes.

7th interrogatory. Do you mean to say that you do not recollect who the Cleft Ledge Company then bought that ledge of, and gave their notes to for it?

or not actively engaged in negotiations of eastern lands, and such stocks as the Cleft Ledge?

This question objected to.

Answer. I know nothing about the business of said Fales; Daniels was at some [time] engaged in some eastern land negotiations, but I cannot recollect at what time; I do not know of his having any thing to do with any other stock than the stock that he traded with Warner.

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7th interrogatory. Do you mean to say that you do not recollect who the Cleft Ledge Company then bought that ledge of, and gave their notes to for it?

Answer. I do not recollect distinctly, but presume it was bought of Thompson and Fales.

8th interrogatory. Have you or not any doubt but that you could have told any one, who might have enquired of you in the fall of 1836, just who said company bought that ledge of, how much you paid for it, how you agreed to pay for it, and all about it?

Answer. I have no doubt.

9th interrogatory. Do you or not recollect of a man by the name of Warner calling upon you, while you was president of said company, for the purpose of enquiring about the condition of the said company, and the value of its stock?

Answer. I do.

10th interrogatory. Will you please to state, as well as you can recollect, what passed at that interview?

Answer. I was not able to inform him very particularly as to the value of the stock; but upon the whole I told him my opinion was rather favorable; I said to him that I had formed my opinion from the printed report of Dr. Jackson, of its value; which I knew he had seen from his conversation; he intimated to me that he was going to hazard most of his property in that speculation, which led me to be more careful not to lead him into any error in relation to it; and I told him that I had never seen it, and that I knew nothing about it, other than what I had been informed by Thompson and Fales, and Jackson's report.

11th interrogatory. Do you recollect whether you cautioned him at all about investing all of his property in that stock, or any thing to that effect?

Answer. I believe I said to him that I should investigate the subject to my satisfaction, before I should put all my eggs into one basket.

12th interrogatory. What time did the company close their business that year, and at what time did you and Mr. Bates have an interview?

Answer. Late in December, 1836, to the best of my remembrance.

13th interrogatory. Should you or not have told any man, at the time Warner called upon you, that the stock was not worth a cent? Did you tell any one so at that time?

Answer. I did not; I could not have told him or any one so, because I did not think so at that time.

14th interrogatory. After you saw Warner, did or did not the commercial embarrassment commence which resulted, in the winter of 1836 and the spring of 1837, in a prostration of most kind of business?

Answer. I should think these commercial embarrassments, alluded to in this interrogatory, commenced before I saw said Warner; but the said embarrassments did not affect the company until after I saw Warner.

15th interrogatory. Was or not your opinion of the value of the stock somewhat changed after the close of the year's operations; and if so, state the reason why?

Answer. My opinion was changed materially. Mr. Thompson, who kept the books, and was the sole agent before Bates went there, had made a contract with the navy agent at Portsmouth to deliver a large

quantity of stone, mostly of larger dimensions than the ledge would yield, unless a large quantity of small stones was first got out, in order to select sufficient large stones from it. The ledge, therefore, was not so valuable, because it would not yield large stone; the clefts were thin, in sheets mostly. Another objection existed, that the sheets tapered inwardly, as a shingle tapers, were not of a thickness, and there was great waste. Of course, the profits on the large stone would not offset the loss on the small or thin stones; and Bates told me that he did not think the ledge could be made profitable to work. But, as evidence that I had not lost *all* confidence in the ledge, I gave three notes for the benefit of the company to pay the laborers on the ledge—my individual notes.

16th interrogatory. Were or not granite quarries commanding high prices at the time you became connected with this company?

Answer. I do not know.

17th interrogatory. When you say the company had not confidence in the first agent, what do you mean—that they had not confidence in his honesty, or his capacity for quarrying stone?

Answer. He had not had sufficient experience in quarrying; I do not mean to impeach his integrity, or capacity to manage other business.

18th interrogatory. Do you recollect of one Caleb Whiting's calling upon you to make inquiries about said company at any time?

Answer. I do not.

Cross interrogatories propounded by G. M. Brown, esquire, solicitor for Samuel Warner.

1st cross interrogatory. Have you or not ever had any conversation with either said defendants, or heard either of them in conversation with other persons, concerning a company or corporation which they called the 'Cleft Ledge Granite Company?' If yea, with which of said defendants had you such conversation, or which held such conversation with others in your hearing? With whom was said conversation, when and where was it, who else was present? State particularly the whole conversation.

This question is objected to.

Answer. I have not with Adams Daniels; I have often times conversed with Joseph J. Fales concerning said company, in Boston, from the year 1836, at different times, to the year 1842; I do not know that any one was present, but there might have been; I cannot state the whole conversation; the officers of the company held meetings as often, perhaps, as once a month, and Fales was one of the directors; the conversation related to the property of the company, and how it should be disposed of and managed; I cannot recollect, in particular, what the conversation was.

2d cross interrogatory. Have you or not ever heard either of said defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom, when and where, who was present, what were those statements?

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Answer. I do not recollect distinctly, but presume it was bought of Thompson and Fales.

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This question is objected to.

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2d cross interrogatory. Have you or not ever heard either of said defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom, when and where, who was present, what were those statements?

This question objected to.

Answer. Not definitely.

3d cross interrogatory. Have you or not ever heard either of the defendants make any representations concerning the property of said company or corporation? If yea, what property did they say said company owned? What was their whole statement about said company's property? When and where was it, who was present, to whom were such representations made?

Answer. Nothing that I can now repeat.

4th cross interrogatory. Have you or not ever heard either of said defendants speak of, or make any statement concerning, any contracts of said company for purchasing stone? If yea, what contracts did they or either speak of, to what amount, with whom? State particularly all that was said by either, and to whom it was said, with the time and place, and persons present.

Answer. I do not recollect that I have; I never saw Daniels, or heard him speak, to my knowledge, until about five years ago; nor since, until a few months since, when he called on me to inquire what I knew in the premises.

5th cross interrogatory. Have you or not ever heard either of said defendants make any statements of their willingness to guaranty said stock to pay a handsome dividend to its stockholders, or say any thing about dividends upon said stock? If yea, state particularly and fully all either of them said, with the time and place, who was present, and to whom it was said?

Answer. No.

6th cross interrogatory. Have you or not ever heard either of the defendants make any statement with regard to the indebtedness of said company? If yea, state particularly and fully what they said, with the time and place, who present, and to whom said.

Answer. Nothing more than when the large notes due from the company were, at meetings of the directors, talked about, it was stated that the notes were due, and valid claims against the company; and they offered, and were willing to cancel said notes, by giving stock of the company.

These meetings were held in 1836 and 1837, and were held in Boston; I cannot tell who of the directors were present; the conversation was general, and not addressed to any one in particular; and I cannot recollect with more distinctness what was said.

7th cross interrogatory. Have you or not ever heard either of the defendants make any statement concerning the number of hands said company employed in getting out rock? If yea, state particularly and fully all was said by either, when and where, who was present, and to whom said?

Answer. Not to my recollection.

8th cross interrogatory. Have or not said defendants, or one of them, ever proposed to sell or exchange with you some shares in said company's stock, or some of said company's notes, for property of yours? If yea, state particularly and fully all the conversation between you and

either of the defendants upon the subject, and what was done by you, and either of them, towards such negotiations?

This question is objected to.

Answer. No.

9th cross interrogatory. If either of the defendants ever made such proposition as inquired of in the last interrogatory, what use did they say they wished to make of your property?

Answer. I have no recollection about it.

10th cross interrogatory. Have you or not ever, at the request of either of defendants, taken any measures to ascertain the value of said stock, or said company's notes? If yea, what, and did you or not ever report to either of the defendants the information respecting said stock or notes you had gained? State when and where you made inquiries, what you learned, and what you reported to the defendants, or either of them, when and where, &c.; and what reply either of the defendants made to your report to them of the result of your inquiries?

Answer. No.

11th cross interrogatory. Did or not either of said defendants in your hearing express any reluctance to selling the stock they had in said company, and assign any reason which induced them to do so? If yea, state particularly and fully all was said by either of them.

Answer. No.

12th cross interrogatory. If you ever inquired of either of the defendants [why] they wished to sell so valuable stock, what reason did they assign?

Answer. I never inquired of either of them why, or whether they, or either of them, wished to sell their stock.

13th cross interrogatory. Did you or not ever hear either of defendants say any thing about the individual liability of the stockholders of said company to pay the company notes? If yea, state fully all they said.

This question objected to.

Answer. I have frequently heard Fales say that he did not believe that the stockholders in said company were individually liable to pay the company's notes and debts; I cannot state more fully or farther what he said; I never heard Daniels say any thing about [it.]

14th cross interrogatory. If you ever had any conversation with either of the defendants about their prospect of selling any more of said stock than they had sold, what was the whole said by you or them; state fully, when, where, &c.

This question objected to.

Answer. I think Fales at one time suggested whether or not it would not be policy to exchange some of the stock in said company for stock in the Sturbridge Cotton Manufactory. This was at one of the meetings of the directors, in Boston; I cannot tell at what time; I do not recollect that I ever had any conversation with either of them about their prospect of selling of any of said stock.

15th cross interrogatory. Have you or not ever seen either of the defendants exhibit papers purporting to be representations concerning said

company or its property; if yea, what papers were exhibited by them; to whom were they exhibited; when and where was it; what was said by either of them about the papers?

This question objected to.

Answer. I have not.

16th cross interrogatory. If you ever heard either of the defendants say any thing about said company owning a brig or other vessel, or about employing any person to sail said brig and look after their navigation, state particularly and fully all either of the defendants said upon the subject, with the time, place, &c., and to whom said.

This question objected to.

Answer. I never did.

17th cross interrogatory. If you ever heard either of the defendants compare the value of said company's stock with any other stocks, state fully all either said upon the subject; give time, place, &c.

This question objected to.

Answer. No otherwise than at the meeting of the directors before mentioned, when Fales suggested the expediency of exchanging some of the stock in this company for stock in the Sturbridge Cotton Factory. Fales said that he thought that the Sturbridge stock was the most valuable. This meeting was held subsequent to the year 1836.

18th cross interrogatory. If you ever heard either of the defendants say any thing about said company having large contracts for furnishing stone, with whom did they say said contracts were; to what amount; for what use did they say said contractors would [want] said stones? Give time, place, &c., and to whom said.

Answer. Fales once mentioned, I think, a contract that had been executed with the committee of some religious society in Portsmouth, to furnish stone for the underpining of a meeting house, and also the contract with the Navy agent at Portsmouth before mentioned. The amount he did not say; but the contract with the Navy agent was represented to be for a large amount. This was said to no one in particular that I remember, but was addressed to all present at the meeting.

19th cross interrogatory. Are you or not acquainted with a farm situated in Franklin and Wrentham, on which the plaintiff formerly lived, which was by him deeded to the said Daniels in the year 1836? If yea, what was the value of the farm and outlands belonging to the same at that time; have you or not ever heard either of the defendants state the value of the same; or have you or not ever heard either of defendants state what said farm and outlands cost them, or either of them; or what said farm stood them at, by the way and manner they got it? State fully all the conversation upon the subjects as particularly and fully as if specially interrogated upon each and every part of your and their conversation with either of the defendants; give the time and place, &c.

Answer. I am not acquainted with said farm; when Daniels called on me recently, he said that the said farm was considered at the time he (Daniels) purchased it, to be worth five thousand dollars; I never

heard either of them say what said farm cost them, or either of them, or what the farm stood them at; and I have stated all that I remember upon the subject inquired of in this interrogatory.

20th cross interrogatory. Did or not said company agree to pay $500, or some other sum, to have a certain contract with the U. S. government at Portsmouth taken off their hands? Was or not the reason of the company's abandoning that contract that the stone of the quarry were so much as to be unfit for the purpose required?

Answer. The said company agreed to pay some person, I do not know who, a certain sum, I do not know how much, to take off of their hands the contract made with the navy agent at Portsmouth. The reason of said company's abandoning that contract was that a majority of the stone in the quarry was so small as to be unfit for the purpose required.

21st cross interrogatory. What did Col. Bates report as to the stone—as to its being to small?

Answer. Said Bates said that the stones were too thin, most of them, to answer the contract, and they were tapering and too small to answer the dimensions of the contract, the bulk of them. I do not know what became of the contract; some one purchased it of the company, and that was the last that I knew of it.

22d cross interrogatory. Why was it abandoned?

Answer. For the reasons before given.

23d cross interrogatory. Why did Col. Bates leave the company's employ?

Answer. The season had advanced too far to get out stones to any profit—stones cannot be got out in the winter—and because the company had not the means of paying him.

24th cross interrogatory. How came you in the company or president; who invited or solicited you to become president?

Answer. I was chosen president; and I was invited and solicited by Fales to become president.

25th cross interrogatory. How much stock of said company do you own, or did you ever own?

Answer. I never purchased or subscribed for a cent of stock in the company. I do not own any shares now; I have owned ten shares, which I think I sold to Fales.

26th cross interrogatory. Did you ever own any of said stock except what you received to compensate you for becoming and acting as said president?

Answer. Never.

27th cross interrogatory. Did or not said Fales exchange C. L. G. Company stock for Sturbridge Factory stock; to what amount; what was the value of the property he received in payment; had it any thing more than a nominal value?

This question objected to.

Answer. I understood from Fales that he did exchange Cleft Ledge

Granite Company stock for Sturbridge Factory stock; to what amount I do not recollect. The Sturbridge stock had only a nominal value.

28th cross interrogatory. Why did Fales make that exchange?

This question objected to.

Answer. I do not know.

29th cross interrogatory. What sort of solicitations resort to to induce you to become president? Did he or not represent that they wished to have some person in that office of character and standing?

This question objected to.

Answer. He did represent to me that they wished to have some person in the office of president of character and standing.

Additional direct interrogatories propounded by F. W. Sawyer, esquire.

1st additional interrogatory. Was or not this transfer of Cleft Ledge stock for Sturbridge stock, by Mr. Fales, made after your opinion of the value of the stock had changed, as you have before stated; was it or not after Warner called upon you?

Answer. It was.

2d additional interrogatory. Do you know, of your own knowledge, any thing about the condition of the Sturbridge Company, at the time of this transfer?

Answer. No.

3d additional interrogatory. Please to state what has been your impression of the feasibility of the Cleft Ledge being worked to advantage under particular circumstances.

This question is objected [to.]

Answer. I have no impression upon the subject, other than what I derived from Dr. Jackson's report, Col. Bates, and others; and my impressions derived from those sources are unfavorable.

4th additional interrogatory. Have you or not often thought, and do you or not now think, that it might be worked to advantage, by a small company, with capital, for some purposes?

This question objected to.

Answer. I think it doubtful whether it could, but still it is possible.

GEORGE ODIORNE.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this thirtieth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused George Odiorne to come before me, in Roxbury, in the county of Norfolk, in said district; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; aad the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner.*

I, Samuel O. Daniels, of Framingham, in the county of Middlesex, and Commonwealth of Massachusetts, of the age of about thirty years, merchant, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, viz:

Interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. Where did you reside in the month of November, 1836?

Answer. In Franklin.

2d interrogatory. When did you remove from there, and where to, and for what purpose?

Answer. I removed to Medway, in March, 1837, for the purpose of trading.

3d interrogatory. Where did Adams Daniels reside previous to your removal to Medway? Was or not Adams Daniels at Medway while you was there, and when?

Answer. Adams Daniels resided in Boston previous to my removal to Medway; he was at Medway in March, 1837, while I was there.

4th interrogatory. Did you or not know of Adams Daniels going to examine one Caleb Whiting's farm, while he was at Medway at that time?

Answer. No.

5th interrogatory. Did you or not know of his going to examine it at any time, and when?

Answer. He and Colonel Saul B. Scott, when I lived at Franklin, I think in February or March, 1837, left the store of Scott & Co. with the intention, as they said, of going to Wrentham, to see Caleb Whiting's farm.

6th interrogatory. Did or not Caleb Whiting ever call on Adams Daniels when you was present? If yea, please to state when it was, where it was, and what was the nature of the interview.

This question objected to.

Answer. Caleb Whiting did call on Adams Daniels at Medway when I was taking account of stock, in the latter part of March, 1837. He called to get pay for his expenses coming to Boston to inquire something about some notes; what notes, or what inquiries he made about them, I do not know. My brother, Adams Daniels, was to pay the expenses if they did not trade.

7th interrogatory. Did or not Adams Daniels pay him his expenses?

Answer. He did.

8th interrogatory. How long before this interview had Whiting been to Boston to make his inquiries?

Answer. I understood from the conversation between them, that it was within a day or two of the time of the interview. He said he had been at Franklin, and did not find him there, and he came on to Medway.

9th interrogatory. Does or not the fact that you went into business

in Medway, enable you to fix the time, or about the time, of this interview, with entire certainty?

Answer. It does.

SAM'L O. DANIELS.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this thirtieth day of May, in the year eighteen hundred and forty-five, by virtue of the annexed commission, I caused Samuel O. Daniels to come before me, in Roxbury, in the county of Norfolk, in said district; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commis'r.*

June 6th, 1845, opened and filed.

I, Aaron D. Capen, of Dorchester, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of thirty-nine years, on oath depose and say, in answer to the several interrogatories and cross interrogatories, hereinafter written, as follows, viz:

Interrogatories propounded by Jonathan P. Bishop, esquire, solicitor for Samuel Warner.

1st interrogatory. Were you acquainted with the affairs and character of the Cleft Ledge Granite Company? If so, when, and for how long a period? Whether in and during the year 1836, and afterwards? Did you hold any office or offices in said company, and when, and how long?

Answer. I was acquainted with the affairs and the character of the Cleft Ledge Granite Company; I cannot say for how long a period, nor whether in and during the year 1836, and afterwards, without referring to the records, which are not in my possession. I was clerk of the company, and secretary of the board of directors, and was a member of the same board; I cannot remember when or how long I held either of said offices.

2d interrogatory. How came you to take an office or any interest in said company? Who induced you to do so, and by what persuasions? When did you retire from, or resign, said office or offices?

Answer. A person by the name of Thompson, but which of the persons by that name I do not remember, introduced the subject to me, of taking an interest in the company; and from the representations made by him, I was induced to buy stock in said company; there were no inducements or persuasions offered to me to take an office; I was chosen a director, and appointed secretary of the directors, and accepted those offices. I do not remember when I retired or resigned said offices; I was also clerk of the company for a short time.

3d interrogatory. What were the character and objects of said com-

pany? Whether or not did it ever have, to your knowledge, and would you have been likely to know if it ever had, any actual capital paid in as capital stock of said company? Whether or not was it a mere fiction got up to cheat and defraud the public? And whether or not means were not taken, and shifts and artifices resorted to, to procure purchasers for the stock, and what those means and shifts were?

Answer. The object of the company was the quarrying of granite; there was some actual capital paid in I know, because I paid some in myself; I do not know whether others paid in any capital or not; and I do not know as I should have been likely to have known it if others had paid in actual capital, as capital stock, in said company; after I had been in it some time, I came to the conclusion that I had been imposed upon, and that it was a mere fiction, and that it was got up to cheat and defraud the public; when it was originally started, I do not think it was intended to cheat or defraud the public, but in the way it was managed and carried on, I think it was conducted to cheat and defraud the public. I supposed that George Odiorne was induced to be president, in order to give a character to the company; and that Peter Harvey was also induced to act as treasurer, by giving him a certain number of shares of the stock, in order to give it a character.

4th interrogatory. Whether or not there was, at a meeting of the officers and directors of said company, an excited and angry discussion? And when, or about when, and how long did it continue? And whether or not was the cause of said discussion the fact, that some of the officers of the company had declined or omitted to make so strong and favorable representations of the and prospects of the company, as the directors in general deemed necessary?

Answer. There were excited and angry discussions at several meetings of the said directors, caused, in part, from the fact that some of the officers had declined to make so favorable representations of the condition and prospects of the company as some of the others desired; at what time the meetings were held, or how long such discussions continued, I do not remember.

5th interrogatory. Was it or not a practice with any of the directors, and with the defendant, J. J. Fales, in endeavoring to put off the stock of said company, to refer the expected purchaser to some of the officers for information as to the condition of the company, and was or not the discussion in the last preceding interrogatory inquired of, caused by said officers, and, if so, what officers, declining to give such an account of the company as Fales wished to have given?

Answer. To the first part of this interrogatory I answer, that I do not know; and to the latter branch of the inquiry I answer, that the discussions alluded to, according to my recollection, arose from, or upon, a report which I made upon the condition and prospects of the company, which did not represent it in so favorable a light as some desired.

6th interrogatory. Whether or not did any of the said officers, and when, resign their offices, and refuse to have any thing more to do with the company? And, if so, who were those officers, and what were their reasons and causes of such resignations?

Answer. I do not know that any officer resigned but myself; I do not remember *when* I resigned; I resigned because I was disgusted with the concern, and was displeased with the management of some of those operating in it, and I found it a losing concern; I resigned the clerkship because it was necessary that the clerk should reside in New Hampshire.

7th interrogatory. Was it or not the practice of said Fales to go about the country seeking whom he might entrap into becoming purchasers of the stock of said company?

Answer. Said Fales did go about the country seeking purchasers for the stock, but whether to entrap them or not I cannot say.

8th interrogatory. State, if you recollect, any instance in which persons, and what persons, about to become purchasers of said stock, were deterred from doing so by your representations or intimations of the actual character of the company?

Answer. Edward Capen, who, I believe, owned some of the stock was about to take more, and I advised him not to, and he did not.

Cross interrogatories propounded by F. W. Sawyer, esquire, solicitor for Adams Daniels and Joseph J. Fales, the first objecting to all the direct interrogatories, as irrelevant incompetent, and leading.

These interrogatories are propounded de bene esse.

1st cross interrogatory. When did you first connect yourself with this enterprise of quarrying granite in New Hampshire? Was you not one of the original petitioners for the act of 'incorporation?'

Answer. I was one of the original petitioners for the act of incorporation, which was my first connection with this enterprise of quarrying stone in New Hampshire.

2d cross interrogatory. Were you not a member of the C. L. Granite Company at its organization? Was you elected one of its officers at any time; and when, and how long?

Answer. I was a member of the Cleft Ledge Granite Company at its organization, and was elected clerk at that time, but resigned very soon, it being discovered that it was necessary that the clerk should reside in New Hampshire.

3d cross interrogatory. Did you not assent to the purchase of the ledge by the company, at the price at which they did buy it? Did you not then think it could be profitably worked at that price? Was it not as low, considering its natural advantages, as quarries were selling at that time?

Answer. I think I did assent to the purchase of the ledge by the company at the price at which they did buy it. I did think it could be profitably worked at that price at the time it was purchased. I had no knowledge upon the subject, but was led to believe so from the representations of others. I do not know whether or not it was as low, considering its natural advantages, as quarries were selling at that time.

4th cross interrogatory. Did you not purchase stock in the company, and speak of its prospects as flattering? Did you not go to Durham and

see the ledge, and write a letter to some one of the company, speaking favorably of the quarry, and the enterprise generally?

Answer. I did purchase stock in the company, and went to Durham and saw the ledge, and wrote a letter to a member of the company, speaking favorably of the quarry and the enterprise generally. But I, at that time, knew nothing about it; it was the first quarry I had ever seen, and my opinion was worth nothing then upon that subject.

5th cross interrogatory. Did you not connect yourself with said company with the expectation that the quarry could be wrought successfully, and with honest designs? If yea, have you any reason to suppose that others were not as honest as yourself in the transaction? Please to state the reasons, if you pretend to have any, why you are to be exempted from the general stigma, if any is to be affixed to said stockholders.

Answer. I did connect myself with said company with the expectation that the quarry could be wrought successfully, and with honest designs, and I have reason to suppose that others were not as honest as myself in the transaction; because, when I made the discovery that the quarry was not what I supposed it to be, as well as the company, and denounced it, I was reproved by Dr. Fales for doing so, because he said, that if I found that it was not so good as I expected, or was deceived in it, I ought not to say so, because it would hurt the sale of the stock.

6th cross interrogatory. Have you not had a difficulty or variance with Mr. Fales, or some one of the company, and with whom was it? (The witness is required to refrain from stating what occasioned the variance, if any existed.)

Answer. I have had a variance with said Fales, but no difficulty or variance with any other member of the company.

7th cross interrogatory. Had not the company some capital; did they not sell some stock; did you not purchase some; and did you not pay for it?

Answer. The company had some capital; they did sell some stock; I purchased some, and I paid for it; and some stock I received for services rendered for the company.

8th cross interrogatory. If you attempt to say what the practice of any one of the directors was, and particularly what the practice of J. J. Fales was, please to state how you know what you have attempted to state? Did you ever hear him or them make any such references? If so, state when, where, and all about it.

Answer. I know nothing upon this subject.

9th cross interrogatory. If you attempt to give the reasons of any act done by any individual besides yourself, will you please to state how you know that any particular reasons [were] the ruling cause.

Answer. I know nothing about the subject here inquired of.

10th cross interrogatory. If you attempt to say that J. J. Fales went about the country seeking to entrap any person, state how you know

that he did. Did you go with him; did you ever see him entrap any one?

Answer. I know nothing more than I have before stated.

11th cross interrogatory. When did your connection with the company cease as an officer? Do you hold any of the stock; was there not a time in the history of the company when you believed the stock worth par value? Did you not believe so when you was at Durham, and after you had viewed the ledge? When did your mind change about the value of the stock and ledge?

Answer. I cannot tell without the record, when my connection with the company ceased as an officer; I do hold some of the stock now; at a very early period after the formation of the company, I did believe the stock worth par value; I cannot say that I did believe so when I was at Durham, and after I had viewed the ledge; I cannot say when my mind changed about the value of the stock and ledge.

12th cross interrogatory. If you had been called upon to state about the condition, prospects, and objects of the company at an earlier day, could you not have given a more satisfactory account of it than at this distant day?

Answer. I think not.

Additional direct interrogatories propounded by J. P. Bishop, esquire, solicitor for Samuel Warner.

1st additional interrogatory. If in answer to the 6th cross interrogatory you say that you did have any difficulty or variance with Mr. Fales, or any one of the company, please state whether that difficulty, or variance, did not arise from the conduct of said Fales, or other one of the company, in relation to the affairs of the company, and the management thereof; and if so, then state fully what that conduct and controversy were.

Answer. The only variance I ever had with Fales, or difficulty, arose at the meetings of the directors of the company. At one of the meetings, when I expressed an unfavorable opinion of the concern, he reproved me for expressing such opinions, because it would hurt the sale of the stock; this occasioned a variance between us. At another time, Fales made some statements respecting me to the board of directors which were not true. These are the only difficulties or variances that have occurred between me and Fales.

2d additional interrogatory. If in answer to the 7th cross you say said company had any capital, please state what it consisted in; and if they sold stock, how they took their pay; and you purchased stock, what you paid for it in?

Answer. The only capital that the company had, that I know of, was cash paid for their stock. They sold me some stock, for which I paid cash; and they gave me some stock in pay for services; I know nothing more about the capital of said company.

3d additional interrogatory. If in answer to the 11th cross interrogatory you say there ever was a time when you believed the stock of

said company worth par value, please state precisely, as near as you can recollect, the month and year when that time was; and state also what your opinion at any and all times in relation to the value of the stock, or probable success of the speculation were or not based rather upon what Fales and the Thompsons had told you, than on your own observations? State whether you had ever before known any thing about quarries, or quarrying, practically; whether your business at that time, and long before, and ever since, was or not that of a school teacher; and whether or not your visit to said quarry, if you made one, was a vacation, ramble, or excursion.

Answer. I cannot state the month, or year, when I believed the stock of said company worth par value. My opinion at all times, in relation to the value of the stock, and favorable success of the speculation, were based rather upon what Fales and the Thompsons had told me, rather than on my own observations. I never before had known any thing about quarries, or quarrying, practically; my business at that time, and long before, and ever since, was, has been, and is, that of a school teacher. I took advantage of a vacation to look after the company concerns, and was to have been paid for it.

AARON D. CAPEN.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

On this thirty-first day of May, in the year eighteen hundred and forty-five, by virtue of a commission sent to me from the circuit court of the United States, for the district aforesaid, returned with certain depositions taken by me by virtue of said commission, to be used in an action or suit in equity there to be tried, in which Samuel Warner is plaintiff, and Adams Daniels and al. are defendants, I caused Aaron D. Capen to come before me, in Roxbury, in the county of Norfolk, in said district; and he, being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories, by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE,
Commissioner.

June 6th, 1845, opened and filed.

UNITED STATES OF AMERICA,

Massachusetts district, ss:

[L. S.] The circuit court of the United States within and for the Massachusetts district.

To John A. Richardson, of Durham, in the county of Stafford, in the State of New Hampshire, esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and

empower you to take the answers to the interrogatories of such witnesses as may be produced in behalf of the plaintiff, upon oral interrogatories to be propounded by the parties, to be used in a certain cause now pending in said court, wherein Samuel Warner is plaintiff in equity, *vs.* Adams Daniels *et al.*

And to this end at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, on the fifteenth day of October, or as soon as the same shall have been executed.

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this fifth day of December, in the year of our Lord one thousand eight hundred and forty-four. FRANCIS BASSETT, *Clerk.*

I herewith enclose the depositions of Seth S. Walker, Jacob J. Pendexter, George Fost, Daniel Mathes, Valentine Mathes, John T. Emerson, and Charles Young, register deeds for Strafford county; the other deponents, William Fost and Benjamin Kelly, were not examined, no such man as William Fost belonging to Durham, and Benjamin Kelley having removed from the State.

J. A. RICHARDSON,
Commissioner.

CIRCUIT COURT UNITED STATES,

District of Massachusetts, ss:

SAMUEL WARNER, vs. ADAMS DANIELS *et al.* } In Equity.

Interrogatories to be propounded to the following witnesses on the part of the defendant, viz., Benjamin Kelly, John T. Emerson, Daniel

Mathews, Valentine Mathews, Seth S. Walker, Geo. Frost and William Frost, all of Durham, and Jacob J. Pendexter, of Dover, all in the county of Strafford and State of New Hampshire, and to Register of deeds for the county of Strafford aforesaid, at said Dover.

Interrogatory 1st. To each and all of said witnesses, except the last named, what is your age; what is your occupation; are you acquainted with the value of land in the region where you reside; do you know, and have you seen, and how often have you seen, a certain farm or tract of land situate in Durham, New Hampshire, commonly known as the Ledge farm, or Leather's farm? If yea, what is the value of said farm? Is said value increased, or otherwise, by reason of any, and if any, what ledge or ledges, situate in and upon the same; and if increased, how much increased; and state whether you do or do not include the price or value of said ledge or ledges in your estimate of the value of said farm. What, in your judgment, was said farm worth, without the ledge, and what including the ledge, on the 1st day of September, A. D. 1835? What was it worth without the ledge, and what with the ledge, on the 25th day of August, A. D. 1836? Has the value of said farm been increased or diminished since the 1st day of September, A. D. 1835; and if yea, how much and in what way, and by whose and what means?

Interrogatory 2d. To each of said witnesses—Did you sell or was you knowing to the sale of said ledge farm on or about the 1st day of September, A. D. 1835, to Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James or Joseph M. Thompson, or others; and if others, what others? If yea, at what price was it sold; whether at the price of $4,500, or what other; and how was that price agreed to be paid; and how was it secured to be paid; whether by mortgage on the premises, or otherwise; whether or not said price, or any part thereof, and if any, what part, has ever been paid; and if paid, when and how, and in what and by whom; and whether or not said mortgage, if any given by said Fales and Thompson has been foreclosed by entry on the premises by Edward Pendexter, assignee of said mortgage, on the first day of April, A. D. 1839, or otherwise? If you know of said foreclosure, how do you know it?

Interrogatory 3d. To the same. Have you had much knowledge of quarries and of the business of quarrying, and of this said ledge on said Ledge farm, as to enable you to estimate the value of said ledge as a quarry? If yea, what in your judgment was the value of it on the 1st day of September, A. D. 1835, or before it was uncovered? Had it any value; and, if any, what? What is its present value, if any? Could it or not, in your judgment, be wrought profitably by any company or corporation at the present time, or could have been so at any time, and, if any, what time within the last ten years? Would it pay the expense? Could any company obtain from it more than enough to pay the cost of quarrying? Is it now wrought by any body; and, if so, by whom?

Interrogatory 4th. To the same. How far do you reside from said farm and ledge? How long have you resided there, or as near said

ledge and farm? Is said farm and ledge or not possessed of any peculiar qualities that gives it an enhanced value over any other, or a great majority of the farms in the town of Durham? If yea, what is the peculiarity?

Interrogatory 5th. To the same. Do you know whether said farm was purchased by any person at auction, or otherwise, previous to the purchase by said Fales and others, on 1st September, 1835? If yea, by whom was it so purchased? How was it sold, at auction or otherwise, and by whom? What sum was paid for it? When was it?

Interrogatory 6th. To the same. What buildings were upon said farm on the 25th day of August, 1836? If any house, will you give as minute a description of the same as in your power? What should you value the same at to stand upon said farm? What would have been the loss to the owner of said farm had the same been consumed by fire in August, 1836? If there was a farm, shed, or sheds, and a shop upon said farm at the last mentioned time, will you describe each of them, give the value of each, and what you would estimate the loss to the owner, to have had them all consumed by fire, or to [have] had them removed from the premises.

Interrogatory 7th. To the same. Has there or not been any work done by any persons or company in opening a ledge? If so, by whom? Was said work done principally before or after August 25, 1836? What in your opinion would be the aggregate value of the work done before that time? What the whole value of work in opening said ledge previous to this time?

Interrogatory 8th. To the same. What amount in value of rock (when got out) was ever taken from said ledge? What was done with said rock? What amount in money did the same bring to those who sold it? What amount of rock was there ready got out and on hand at said ledge or upon the premises on the 25th August, 1836? What became of that?

Interrogatory 9th. To the same. Are you or not acquainted with said Fales or either of said Thompsons; or have you or not any acquaintance with a corporation called the "Cleft Ledge Granite Company?" If yea, state particularly what dealings or contracts you have had with either, and how such have been executed on their part? Have you or not received all your dues from them? If nay, for what articles or thing of value received of you do either now owe you?

10th interrogatory. To the same. Have you or not from 25th August, 1836, to the following January, a full knowledge of the credit, standing, and value of the stock of said corporation? If yea, what was its credit and standing? What would said stock have sold for in the town of Durham, between said periods? Was or not any of said stock for sale or offered for sale in the town of Durham, ever at any time?

Interrogatory 11th. To the same. What was the value of all the tools, including every implement used by said company about said ledge, 25th August, 1836? Had they or not any carts, trucks, or any

other expensive machinery for moving stone? If so, what; what its value?

Interrogatory 12th. To the same. What would be a fair expense for making the road, as the same was made prior to August 25, 1836, to where the same strikes the county road? How many rods is it? Is it or not made from the refuse stone and the dirt removed from off the ledge? Was or not the making the road from the ledge to the county or town road much additional expense to opening the ledge? If so, how much? What easier mode could those opening said ledge have adopted to get rid of the earth, gravel, and chips?

Interrogatory 13th. To the same. Were there any fruit trees upon said farm, in August, 1836, or for a year before or after that time, of much or any value? If yea, state what kind, quality, number, and size, age, and what would have been the whole value at that time, and how much it would have diminished the estimate you have put upon the farm, to have had them removed from it?

Interrogatory 14th. To the same. Are you or not knowing to said company freighting any rock to New York? If yea, how much did they ship? If one, or more cargoes, how large the vessels? How was the same taken to the vessel from the wharf, and by whom? Who paid the freight from the wharf to [the] vessel, and who paid the freight in the vessel? If neither were paid, why were they not paid? Did or not the stone arrive safely, or did or not the same bring enough to pay the freight, or were or not the corporation liable, willing, or able to pay the same?

Interrogatory 15th. To the same. Is said ledge easier or harder to work, than other ledges in town? Is the rock more or less valuable when got out, than others? Are there or not an abundance of granite ledges equally as good, with as great facilities of transportation, and as easily wrought, that are not esteemed by farmers in Durham, to enhance the value of their farms; or would not farmers in Durham prefer to exchange such ledges for such lands as lie between the ledges?

Interrogatory 16th. To the same. On said Cleft Ledge farm, (so called,) which do you consider the most valuable land by the acre, the ledges, or the arable and mowing fields?

Interrogatory 17th. To the last named witness, register of deeds, as aforesaid. Will you annex copies from your records, duly attested by you, of the following deeds, viz:

One from some person, as administrator or otherwise, of a farm in Durham, in your county, called the Leather's farm, to one Edward Pendexter, of said Durham; also a deed from said Pendexter to Joseph J. Fales, and others, of the same farm, dated about 1st September, 1835; also a deed, if any, from said Joseph J. Fales, and others, to a company, or corporation, called the Cleft Ledge Granite Company, (if any such there is,) dated some time in the year 1836; also of a mortgage deed from said Fales, and others, to said Pendexter, or some other person, of the same farm, dated the same day of Pendexter's deed. Also of a mortgage deed, if any, from said company to said

Fales and others; also of a deed from John F. Emerson, to said company, of a strip of land, road, and wharf, dated some time in the year 1836.

JONA. P. BISHOP,
Plaintiff's solicitor.

Cross interrogatories to the witnesses named as of Durham and Dover, N. H., propounded by the defendants, they first objecting to the 10th, 14th, and 12th.

1. If you have made any estimate as to the value of the Leather's farm, in answer to the first interrogatory direct, state what you understand to be the chief considerations in a granite quarry. State what value you attach to its location. What to its quality. What to the facilities for transportation. What to its ability to furnish large or small stones. What to its being good or bad reft. What to its combination of quartz, mica, and feldspar.

State whether all of these do not enter into the estimate of the value of a granite quarry. State whether you have estimated them.

2. Is not the location of a granite quarry a great item to be considered in estimating its value?

3. Is there not a great difference in the rift of stone even in the same neighborhood? Is there not a great choice in ledges for the different combination of quartz, feldspar, and mica? Does not some stone wear much brighter than others?

4. Have either of you any experience in testing granite? Did you ever test the Cleft Ledge at Durham? If yea, give a chemical analysis of it.

5. Has any other ledge in Durham been tested as fully, and operated upon as much, as the Cleft Ledge, (so called?)

5. Is the Cleft Ledge good rift; how is the quality? How does it compare with the Quincy Granite? Is it dark or light granite?

7. Is the location of the Cleft Ledge better for working and transportation than the other ledges in the town? Do you think the price of granite abroad, say in Boston, New York, &c., ought to influence the value of a granite quarry at all? Should a ledge bring more when granite is high, than when it is low?

8. How have you estimated the value of the Cleft Ledge in 1835? Have you estimated it by comparing it with the price of other ledges of equal value sold in 1835, or by prices now? How have you estimated the same farm in 1836; has it been by such a comparison then, or by prices now?

9. State, if you know, at what prices good granite ledges, well located, were held, and sold at, in 1835, and in 1836? What was paid for the Kennebunk Ledge? What was paid for the Blue Hill Ledge? Were not good ledges, well located, held high in 1835 and in 1836? Did you ever know of any being sold as high as $50,000?

10. Was you concerned in any purchase of granite ledges, or in stock in any company? Was you knowing to the sales of any other quarry

besides this to an incorporated company? If you was, state the price that or those quarries brought; and their comparative value to this ledge, considering quality, location, and every thing?

11. Did you ever see Dr. Jackson's report on the Cleft Ledge, (so called?) Was that an accurate report? If not, state wherein it errs.

12. If you know any thing about the facts enquired of in the 2d direct, state how you know it; whether the facts you testify to are in deeds, or other writings; if so, annex them; or whether of your own knowledge, or by hearsay?

13. If you say, in answer to the 5th direct, that said ledge could not be wrought profitably by any company, does not that depend somewhat on the price of granite; if granite was $6 or $7 per ton in Boston and New York, could it not be wrought profitably? Have you any experience in quarrying on your account? How much would it cost to quarry 100 tons of granite there? How much to fit it for market? How much to get it to market? Are your estimates founded on your own experience, or do you guess at it?

14. If you say you do know the facts inquired of in the 5th direct, state how you know them; who told you these facts, or do you know them of your own knowledge?

15. If you say you do know any of the facts inquired of in the 6th direct, state how you know them, whether of your own knowledge or by hearsay; state what you base your estimates upon; are they upon the cost, or upon the state of things as they existed in November, 1836; or now; or when? Do you know what they cost? Did you ever build such buildings? Are your estimates any other than guesses?

16. If you say you know any thing about the facts inquired of in the 7th interrogatory, state how you know, whether of your own knowledge, or by hearsay? Do you, or either of you, know what the cost of opening the ledge was; what the cost of testing it was; what the cost of opening the road was; what the cost of putting the wharf in order, for the reception of stone, was; what the shops cost; what the tools cost; what the wheels, drags, drills, guoys, ropes, blocks, &c., &c.? Did you ever see the bill for these articles, or know what they cost? Is not your whole knowledge derived from others?

17. If you undertake to say what work was done before August 25, 1836, and what after, state how you know the facts you testify to; did you see the bills?

18. If you undertake to testify to the cost of the outlays there, previous to August 25, 1836, give the estimate, item by item, as to how you know what you are testifying to; are not all of your estimates mere guesses?

19. If you attempt to give any estimates in answer to the 8th interrogatory, state how you know that your estimates are correct; give your means of information; did you measure the stones, or see an account of the sales? Who told you the facts you have testified to?

20. If, in answer to the ninth direct, you say the said company are in arrears to you, state your account, debt, and credit, up to Nov. 28, 1836,

and annex the same to this deposition; if you say you had any contracts with said company, annex said contracts, and state particularly the breaches on the part of the company; if you say the company is in arrears to others, state who told you so.

21. If you say, in answer to the 10th direct, that you know the value of said stock from Aug. 25, 1836, to Nov. 28, 1836, state how you know it; did you buy any of it during that period? If yea, state at what prices; if you say you was then offered any at less than par, state who offered it to you, what the price was, what the man's name is, where he lives, whether you know that he had stock to sell, how you know it, and all about it; how do you know any thing about the credit and standing of said stock at that time? State particularly. Are you sure this testimony of yours does not refer to a period later than Nov. 28, 1836?

22. If you attempt to answer the 11th direct, by giving an estimate, please annex a list of the tools and machinery then in use by said company, with the cost; state how you know your list is accurate; if your estimate is mere guess work, say so; how do you fix the date; who told you these facts?

23. If you attempt to estimate the cost of the road, as inquired about in the 12th direct, state whether you ever built such a road; whether you actually know any thing about the expense, and how you know it; what you would engage to pay the bills for building that road for?

24. If you attempt to answer the 14th direct, state whether what you have testified to about the matters there inquired about, you know of your own knowledge, or have you learned it from others; and if from others, of whom; when were those stone shipped; were they not shipped by the original purchasers, the Fales and Thompsons; had the corporation any interest in that shipment?

25. How did you estimate the Cleft Ledge in the fall of 1836? Did you not estimate it higher than in 1833 or 1834; was there not a general belief that there was more value in that ledge than had been before known; and also more than is now considered to be worth?

26. Is not good granite, well situated, and affording facilities for operating, worth something in your neighborhood now; would you now sell a good granite quarry as cheap by the acre as pasture or mowing land, if it was well located?

27. If you owned the Cleft Ledge Granite Quarry now, would you sell it as cheap by the acre as the other part of the farm? Do you now attach no special value to it?

28. How far is Durham from Portsmouth, N. H.? Is there not considerable of granite used there? Are not the facilities for transporting it from Durham very good? State what the facilities are.

29. State what communications have passed between you and Jonathan P. Bishop, respecting what you were to testify in this case; give time and place of the interview, and all about it.

F. W. SAWYER,
Solicitor for Defendants.

It is hereby agreed that the foregoing seventeen direct and twenty-nine cross interrogatories, and none others, shall be considered the oral interrogatories to be propounded to the above named witnesses; and that they shall be propounded by the commissioner named by the courts, and the answers taken down and sealed up by him, without the presence of the parties or their agents.

F. W. SAWYER,
Attorney for Daniels et al.
JONATHAN P. BISHOP,
Plaintiff's Solicitor.

CIRCUIT COURT OF THE UNITED STATES IN EQUITY,
District of Massachusetts:

SAMUEL WARNER, complainant,
vs.
ADAMS DANIELS et al.. defendants.

Pursuant to the annexed commission, on the seventeenth day of March, A. D. 1845, the day appointed for the purpose, Charles Young, register of deeds for the county of Strafford, in the State of New Hampshire, the witness to whom the 17th annexed interrogatory was propounded, being carefully examined and sworn touching the premises, in answer to said interrogatory testifies as follows, to wit:

That he, as requested, hereby annexes the deeds specified in said interrogatory, duly attested by him, as register of deeds for said county of Strafford.

CHARLES YOUNG.

The foregoing answer was reduced to writing by me, and was subscribed and sworn to by said Charles Young, before me,

J. A. RICHARDSON,
Commissioner and Justice of Peace.

Know all men by these presents, that the Cleft Ledge Granite Company, a corporation duly established by the laws of the State of New Hampshire, in consideration of the sum of fifty-three thousand dollars, paid by Joseph J. Fales, physician, and Newell A. Thompson, gentleman, both of the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, doth hereby give, grant, bargain, sell, and convey, unto the said Joseph J. Fales, and Newell A. Thompson, their heirs and assigns, forever, a certain tract, or parcel of land, with the buildings thereon, situate in Durham, in the county of Strafford, and State of New Hampshire, containing, by estimation, sixty acres, be the same more or less, and bounded and described as follows, to wit, southerly and southwesterly by the road leading from the late dwelling house of Jonathan Steele to Dover, westerly by land now or late of Richard Steele and Andrew Emerson, northerly by land now or late of Nathan Wood-

man, and easterly by the road leading from the said Dover road to Madbury, or however otherwise bounded or described, together with all the privileges and appurtenances to the same belonging; said premises being the same conveyed to the said Cleft Ledge Granite Company by the said Joseph J. Fales and Newell A. Thompson, by their deed, duly executed and recorded in Strafford registry; to have and to hold the above granted premises, to the said Joseph J. Fales and Newell A. Thompson, their heirs and assigns, to their use and behoof forever. And the said Cleft Ledge Granite Company, for itself and its successors, doth covenant with the said Joseph J. Fales and Newell A. Thompson, their heirs and assigns, that said company is lawfully seized, in fee simple, of the afore granted premises, that they are free from all incumbrances, except a mortgage to Edward Pendexter, for the sum of twenty-two hundred and fifty dollars, and interest from September 1st, 1835, which the said Joseph J. and Newell A. have agreed to pay, and cause to be discharged; that said company has good right to sell and convey the same to the said Joseph J. Fales and Newell A. Thompson, in manner as aforesaid, and that said company and its successors, will warrant and defend the same to the said Joseph J. Fales and Newell A. Thompson, their heirs and assigns, forever, against the lawful claims and demands of all persons. Provided, nevertheless, that if the said Cleft Ledge Granite Company, its successors and assigns, shall pay unto the said Joseph J. Fales and Newell A. Thompson, their executors, administrators, or assigns, the sum of thirteen thousand two hundred and fifty dollars, in thirty days from the date hereof; the further sum of thirteen thousand two hundred and fifty dollars, in one year from the date hereof; the further sum of thirteen thousand two hundred and fifty dollars in two years from the date hereof; and the further sum of thirteen thousand two hundred and fifty dollars in three years from the date hereof, with interest on said sums at the rate of six per centum per annum, payable annually, then this deed, as also four several notes of hand, bearing even date with these presents, signed by the President and Treasurer of said Cleft Ledge Granite Company, whereby the President, Directors, and Company of said Cleft Ledge Granite Company promise to pay the said Joseph J. Fales and Newell A. Thompson, or their order, the said sums and interest at the times aforesaid, shall all be absolutely void, to all intents and purposes. And provided, also, that until default of the payment of the said sums or interest, as herein provided, the mortgagee shall have no right to enter and take possession of the premises, but said company may use, occupy, and improve the same, and may quarry granite therefrom, without the hindrance or interruption of the said mortgagees or their representatives.

In witness whereof, the said president and treasurer of said Cleft Ledge Granite Company have hereunto set their hands, and affixed the corporate seal of said company, this twenty-fifth day of August, in the year of our Lord eighteen hundred and thirty-six.

GEORGE ODIORNE, *President.*
PETER HARVEY, *Treasurer.* [L. S.]

Signed, sealed, and delivered in presence of— The words '*heirs, executors, and administrators*,' '*and heirs and administrators shall*,' on the first page, being first erased. Also the words '*heirs, executors, or administrators*,' '*said*' '*seal*,' and the clause relating to insurance, on the second page, being first stricken out, and the words '*affixed the corporate seal of said company*,' on the second page, being first interlined. Also the word 'without,' first interlined.

GRENVILLE T. WINTHROP,
JOSEPH HASTINGS.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

AUGUST 30th, 1836.

Then personally appeared the above named George Odiorne, president, and Peter Harvey, treasurer, and acknowledged the above instrument to be the free act and deed of the Cleft Ledge Granite Company.

Before me, GRENVILLE T. WINTHROP,
Justice of the Peace.

Received October 14, 1836.
Examined by G. L. WHITEHOUSE, *Recorder.*

Strafford county records, book 170, page 336.
Copy examined by CHARLES YOUNG, *Recorder.*

Know all men by these presents, that I, John T. Emerson, of Durham, in the county of Strafford, and State of New Hampshire, yeoman, in consideration of six hundred dollars to me paid by the Cleft Ledge Granite Company, a corporation duly established by the laws of the State of New Hampshire, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Cleft Ledge Granite Company, its successors and assigns forever, two tracts or parcels of land situate in Durham, in the county of Strafford, and State of New Hampshire, containing, by estimation, five-eighths of an acre, more or less, and bounded and described as follows, to wit: a tract of land bounded by the channel of Oyster river, commencing at a point opposite the fence of Dr. Steele, and separating the premises from land now, or late, of Richard Steele, to a point opposite the lower corner of the company's wharf, standing on the premises; thence on a line with the wharf to the wharf; thence by the wharf and wharf lot, on a line with the wharf, one hundred and thirty-two feet; thence by a lot of land, of which these premises are a part, to the road leading from Durham to Portsmouth, two rods from land of said Steele; thence by the road to Steele's land; thence by Steele's land to the river, at a point on the channel above named, or however otherwise the same premises may be bounded or described, together with all the privilege of dockage, and all the appurtenances to the same belonging. Also, another tract bounded by the road from Durham to Portsmouth two rods; thence by

land, of which this is now a part, to the road from Durham to Dover, at a point seventy-two feet from the land of said Steele; thence by the road seventy-two feet; thence westerly, by land of said Steele, to the Portsmouth road, or however otherwise the same premises may be bounded or described, together with all the privileges and appurtenances to the same belonging; it being understood that, in case the road near the wharf should be made wider than it now is, the said C. L. Granite Company will build, or cause to be built, a sufficient bank wall against the east bank of the road, to preserve the land of said Emerson from breaking or caving by the action of the frost; to have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Cleft Ledge Granite Company, its successors and assigns, to its and their use and behoof forever. And I, the said John T. Emerson, for myself and my heirs, executors, and administrators, do hereby covenant with the said Cleft Ledge Granite Company, its successors and assigns, that I am lawfully seized in fee of the afore granted premises; that they are free from all encumbrances; that I have good right to sell and convey the same to the said Cleft Ledge Granite Company in manner as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Cleft Ledge Granite Company, its successors and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said John T. Emerson, together with——, wife of said John T., who, for the consideration aforesaid, hereby releases and quit claims all her right, title, and claim to dower or thirds in the foregoing premises, and every part thereof, have hereunto set our hands and seals, this twentieth day of October, in the year of our Lord eighteen hundred and thirty-six.

JOHN T. EMERSON, [SEAL.]
MARY EMERSON. [SEAL.]

Signed, sealed, and delivered in presence of us—
LEVI BATES,
SETH S. WALKER.

STRAFFORD, *ss:*

October 20th, A. D. 1836.

Then personally appeared the above named John T. Emerson, and acknowledged the foregoing instrument to be his free act and deed.
Before me, SETH S. WALKER, *Justice of the Peace.*

Received October 21, 1836. Examined by
G. L. WHITEHOUSE, *Recorder.*

Strafford county records, book 170, page 447. Copy examined by
CHARLES YOUNG, *Recorder.*

Know all men by these presents, that we, Joseph J. Fales, physician, and Newell A. Thompson, gentleman, both of the city of Boston, in the county of Suffolk and Commonwealth of Massachusetts, in consid-

eration of fifty-three thousand dollars to us paid by the Cleft Ledge Granite Company, a corporation duly established by the laws of the State of New Hampshire, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey, unto the said Cleft Ledge Granite Company, its successors and assigns forever, a certain tract or parcel of land, with the buildings thereon, situate in Durham, in the county of Strafford and State of New Hampshire, containing by estimation sixty acres, more or less, and bounded and described as follows, to wit: southerly and southwesterly by the road leading from the late dwelling-house of Jonathan Steele to Dover, westerly by land now or late of Richard Steele and Andrew Emerson, northerly by land now or late of Nathan Woodman, and easterly by the road leading from the said Dover road to Madbury, or however otherwise bounded or described, together with all the privileges and appurtenances to the same belonging—said premises are the same conveyed to Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, by Edward Pendexter, by his deed dated the first day of September, A. D. 1835, and recorded in Strafford registry, lib. 166, fol. 108, and by the said George C. and James M. released to the said Newell, by their deed, dated the twentieth day of November, A. D. 1835, and recorded in said Strafford registry, lib. 167, fol. 201, as on reference to said deeds will appear; to have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Cleft Ledge Granite Company, its successors and assigns, to its and their use and behoof forever. And we, the said Joseph J. Fales and Newell A. Thompson, for ourselves and our heirs, executors and administ[rat]ors, do hereby severally covenant with the said Cleft Ledge Granite Company, its successors and assigns, that we are lawfully seized in fee of the afore granted premises; that they are free from all incumbrances except a mortgage to said Edward Pendexter for about the sum of twenty-two hundred and fifty dollars and interest from the first of September last, which the grantors agree to pay and cause to be discharged; that we have good right to sell and convey the same to the said Cleft Ledge Granite Company in manner as aforesaid; and that we will, and our heirs, executors, and administrators shall, warrant and defend the same to the said Cleft Ledge Granite Company, its successors and assigns forever, against the lawful claims and demands of all persons. In witness whereof, we, the said Joseph J. Fales and Newell A. Thompson, together with Caroline L. Fales, wife of the said Joseph J., and Susan S Thompson, wife of the said Newell A., who for the consideration aforesaid hereby severally release and quit-claim all their and each of their right, title, and claim to dower or thirds in the afore granted premises and every part thereof, have hereunto set our hands and seals this twenty-fifth day of August, in the year of our Lord eighteen hundred and thirty-six.

Signed, sealed and delivered, in presence of us,

JOSEPH J. FALES, [SEAL.]
CAROLINE L. FALES. [SEAL.]

Witness to the signature of Joseph J. Fales,
Newell A. Thompson, and Susan S. Thompson.
JOHN B. CRAFT,
A. E. CAPEN.

N. A. THOMPSON, [SEAL.]
SUSAN S. THOMPSON. [SEAL.]

Witness to the signature of Caroline L. Fales.
HENRY H. HAMMETT,
NATHAN B. HAMMETT.

SUFFOLK, *ss:*

Boston, August 26, *A. D.* 1836.

Then personally appeared the above named Joseph J. Fales and Newell A. Thompson, and acknowledged the foregoing instrument to be their free act and deed, before me,

JOHN HEARD, *Justice of the Peace.*

Received August 29, 1836. Examined by
G. L. WHITEHOUSE, *Recorder.*

Strafford county records, book 170, page 60. Copy examined by
CHARLES YOUNG, *Recorder.*

Know all men by these presents that we, Joseph J. Fales, physician, George C. Thompson, merchant, Newell A. Thompson, gentleman, and James M. Thompson, merchant, all of the city of Boston, in the county of Suffolk and Commonwealth of Massachusetts, in consideration of the sum of thirty-two hundred and fifty dollars, paid by Jacob J. Pendexter, of Durham, in the county of Strafford and State of New Hampshire, carpenter, the receipt whereof we do hereby acknowledge, do hereby give, grant, sell, and convey, unto the said Jacob J. Pendexter, his heirs and assigns forever, a certain tract or parcel of land, with the buildings thereon, situate in Durham aforesaid, containing about sixty acres, be the same more or less, bounded and described as follows, viz: southerly and southeasterly by the road leading from the late dwelling-house of Jonathan Steele to Dover, westerly by land now or late of Richard Steele and Andrew Emerson, northerly by land now or late of Nathan Woodman, and easterly by the road leading from Durham village to Dover, together with all the privileges and appurtenances to the said premises belonging—the said tract or parcel of land being the same this day conveyed to us by Edward Pendexter, by deed recorded herewith; to have and to hold the afore granted premises to the said Jacob J. Pendexter, his heirs and assigns, to his and their use and behoof forever. And we, the said Joseph J., George C., Newell A., and James M., do hereby, for ourselves and our heirs, executors, and administrators, covenant with the said Jacob J. Pendexter, his heirs and assigns, that we are lawfully seized in fee simple of the afore granted premises; that they are free of all incumbrances; that we have good right to sell and convey the same to the said Jacob J. Pendexter,

and that we and our heirs, executors, and administrators, will warrant and defend the same premises to the said Jacob J. Pendexter, his heirs and assigns forever, against the lawful claims and demands of all persons: Provided, nevertheless, that if the said Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, their heirs, executors, or administrators, pay to the said Jacob J. Pendexter, his heirs, executors, administrators, or assigns, the sum of one thousand dollars, in three months from the date hereof; also the sum of eleven hundred and twenty-five dollars, in one year, from the date hereof, with interest; and the further sum of eleven hundred and twenty-five dollars, in two years from the date hereof, with interest; then this deed, as also three certain notes of hand, bearing even date with these presents, given by the said Joseph J., George C., Newell A., and James M., to the said Jacob J. Pendexter, whereby they jointly and severally promise to pay the same sums and interest, at the time aforesaid, shall all be void, otherwise remain in full force; and provided, also, that until default of or in the payment of the said several sums, or some part thereof, or of the interest therefor, contrary to the true intent and meaning of the preceding proviso, it shall and may be lawful to and for the said Joseph J., George C., Newell A., and James M., their heirs and assigns, peaceably and quietly to hold and enjoy, all and singular, the premises hereby granted; and to receive and take the rents and profits thereof to and for their own use and benefit, without the denial or interruption of or by the said Jacob J. Pendexter, his heirs or assigns, or of or by any other person or persons, claiming from, by, or under him or them. In witness whereof we, the said Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, together with Caroline L. Fales, wife of said Joseph J., Martha A. Thompson, wife of said George C., Susan S. Thompson, wife of said Newell A., and Caroline M. Thompson, wife of said James M., who hereby severally release all right and title to dower in the afore granted premises, have hereunto set our hands and seals this first day of September, in the year of our Lord one thousand eight hundred and thirty-five.

JOSEPH J. FALES, [SEAL.]
CAROLINE L. FALES, [SEAL.]
GEORGE C. THOMPSON, [SEAL.]
MARTHA A. THOMPSON, [SEAL.]

Signed, sealed, and delivered in presence of us. The word twenty-first written. Witnesses to the signatures of George C. Thompson and Martha A. Thompson.

ABNER P. STINSON,
JOSEPH CRANE.

N. A. THOMPSON, [SEAL.]
SUSAN S. THOMPSON, [SEAL.]
J. M. THOMPSON, [SEAL.]
CAROLINE M. THOMPSON. [SEAL.]

Witnesses of the remainder of the signatures:
EDWARD SHED,
SULLIVAN B. BALL.

SUFFOLK, *ss.* BOSTON, *Sept. 4th*, 1835.

Then the above named Joseph J. Fales, Newell A. Thompson, and James M. Thompson, acknowledged the above instrument to be their free act and deed.

Before me WILLIAM KNAPP, *Justice of Peace.*

STATE OF NEW HAMPSHIRE,
Rockingham, ss:
NEW MARKET, *Sept.* 5, 1835.

Then the within named George C. Thompson personally appeared and acknowledged the within instrument to be his free act and deed.

Before me ABNER P. STINSON,
Justice of the Peace.

Received Sept. 5, 1835. Examined by
G. L. WHITEHOUSE, *Register.*

Strafford county records, book 166, page 6. Copy examined by
CHARLES YOUNG, *Recorder.*

Know all men by these presents, that I, Jacob J. Pendexter, within named, in consideration of the sum of thirty-two hundred and fifty dollars, to me in hand paid before the delivery hereof, by Edward Pendexter, of Madbury, in said county of Strafford, do by these presents grant, bargain, sell, transfer, assign, and make over to the said Edward Pendexter, his heirs and assigns forever, the said mortgaged premises as within described; to have and to hold the same to him, the said Edward, his heirs and assigns forever, in as full and ample a manner as I, the said Jacob, my heirs or assigns, might hold and enjoy, by virtue of the within mortgage and no otherwise; and I do for myself, my heirs, executors, and administrators, hereby authorize and empower the said Edward, his heirs, executors and administrators, to receive to his and their use, the sum and sums mentioned in the condition of the within deed, whenever the same shall be tendered or paid to him or them, by the within named Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, their heirs, executors or administrators, agreeable thereto, and to discharge the said mortgage or reconvey the premises upon redemption thereof, as by law is provided, as fully to all intents and purposes as I, the said Jacob, my heirs, executors or administrators, might or ought to have discharged or reconveyed the same in case of such tender, payment, or redemption, if this assignment had not been made. And I do for myself, my heirs, executors and administrators, covenant with the said Edward, his heirs, and assigns, that I have good right to assign the said premises as aforesaid, and that he, the said Edward, shall and may have, hold, occupy, and possess the same, in the same way and manner that I might under and

by virtue of said mortgage, against the lawful claims of all persons. In witness whereof I have hereunto set my hand and seal this fifth day of September, A. D. 1835.

J. J. PENDEXTER. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES WOODMAN,
AMASA DAME.

STATE OF NEW HAMPSHIRE,
Strafford, ss: *Sept.* 5, 1835.

Personally appearing, said Jacob J. Pendexter, acknowledged the above instrument to be his free act and deed.

Before me, CHARLES W. WOODMAN,
Justice of the Peace.

Received, September 5, 1835. Examined by
G. L. WHITEHOUSE, *Register.*

Strafford county records, book 166, page 8. Copy examined by
CHARLES YOUNG, *Recorder.*

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

June 1, 1841. Personally appeared the above named J. J. Pendexter, and acknowledged the above instrument to be his free act and deed, this day witnessed by me and Amasa Dame, before me,

CHARLES W. WOODMAN,
Justice of the peace.

Received names of witnesses and acknowledgment, June 4, 1841. Examined by T. T. EDGERLY, *Recorder.*

Strafford county records, book 166, page 8. Copy examined by
CHARLES YOUNG, *Recorder.*

Know all men by these presents, that I, Edward Pendexter, of Madbury, in the county of Strafford, and State of New Hampshire, yeoman, in consideration of fifty thousand dollars, paid by Joseph J. Fales, physician, George C. Thompson, merchant, Newell A. Thompson, gentleman, and James M. Thompson, merchant, all of the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, their heirs and assigns, forever, a certain tract or parcel of land, with the buildings thereon, situate in Durham, in the county of Strafford aforesaid, containing by estimation sixty acres, more or less, and bounded and described as follows, to wit: Southerly and southeasterly by the road leading from the late dwelling house of Jonathan Steele to Dover, westerly by land now or late of Richard Steele and Andrew Emerson, northerly by land now or late of Nathan Woodman, and easterly by the road leading from the said Dover road to Madbury, and lies on both sides of the old

road leading from Durham village to Dover; together with all the privileges and appurtenances to the said premises belonging; said tract or parcel of land above described being the northerly part of the homestead farm of Robert Leathers, late of said Durham, deceased, and the same conveyed to me, the said Pendexter, by Paul Chesley, by deed dated 17th May, anno domini 1828, and recorded with Strafford deeds lib. 132, folio 300. To have and to hold the above granted premises to the said Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, their heirs and assigns, to their use and behoof, forever. And I, the said Edward Pendexter, for myself and my heirs, executors and administrators, do covenant with the said Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, their heirs and assigns, that I am lawfully seized in fee simple of the afore granted premises, that they are free from all incumbrances, that I have good right to sell and convey the same to the said Joseph J., George C., Newell A., and James M., their heirs and assigns, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, their heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Edward Pendexter, together with *Edward* Pendexter, wife of the said Edward, who for the consideration aforesaid, hereby remises, releases, and forever quit-claims all her right, title, and claim to dower or thirds in the aforegranted premises, have hereunto set our hands and seals, this first day of September, in the year of our Lord eighteen hundred and thirty-five.

EDWARD PENDEXTER, [SEAL.]
MARY PENDEXTER. [SEAL.]

Signed, sealed, and delivered in presence of us—
J. J. PENDEXTER,
SETH S. WALKER.

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

September 1st, 1835. Then personally appeared the above named Edward Pendexter, and acknowledged the above instrument to be his free act and deed, before me,

SETH S. WALKER,
Justice of the peace.

Received, September 5, 1835. Examined by
G. L. WHITEHOUSE, *Recorder.*

Strafford county records, book 166, page 108. Copy examined by
CHARLES YOUNG, *Recorder.*

Know all men by these presents, that I, Paul Chesley, of Madbury, in the county of Strafford, and State of New Hampshire, esquire, for and in consideration of the sum of four hundred and one dollars, to me

in hand, before the delivery hereof, well and truly paid by Edward Pendexter, of Madbury aforesaid, gentleman, the receipt whereof I do hereby acknowledge, have remised, released, and quitted claim, and by these presents do remise, release, and quit-claim, unto the said Edward Pendexter, his heirs and assigns, forever, all my right, title, interest, and estate, of, in, and unto a certain tract or parcel of land, with all the buildings thereon, situate in Durham, in said county, containing by estimation sixty acres, more or less, and is bounded southerly and southeasterly by the road leading from the late dwelling house of Jonathan Steele, to Dover, westerly by land of Richard Steele and Andrew Emerson, northerly by land of Nathan Woodman, and easterly by the road leading from Madbury to the first mentioned road, and lies on both sides of the old road leading from Durham village to Dover; being the same premises I purchased at auction, December 11, 1827, of the said Pendexter, as administrator of the estate of Robert Leathers, late of said Durham, deceased, and is the northerly part of the said deceased's homestead farm.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to him, the said Edward Pendexter, and his heirs and assigns, to his and their only proper use and benefit, forever. Hereby engaging to warrant and defend the said granted premises against all claims or demands of any person or persons, claiming by, from, or under me.

And I, Mary Chesley, wife of the said Paul Chesley, in consideration aforesaid, do hereby relinquish all my right of dower in the above described premises.

In witness whereof, we have hereunto set our hands and seals, this 17th day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

PAUL CHESLEY, [L. S.]
MARY CHESLEY. [L. S.]

Signed, sealed, and delivered, in presence of—

JOSEPH W. PAGE,
VALENTINE SMITH,
ROBERT LEATHERS. } Witness to Paul Chesley's signature.

Strafford, ss:

The 17th day of May, one thousand eight hundred and twenty-eight, then the above named Paul Chesley personally appearing, acknowledged the above written instrument to be his voluntary act and deed, before me,

VALENTINE SMITH,
Justice peace.

Received May 20, 1828; examined by

M. L. NEAL, *R. D. R.*

Strafford county records, book 132, page 300; copy examined by

CHARLES YOUNG, *Recorder.*

CIRCUIT COURT OF THE U. S. IN EQUITY,
District of Massachusetts.

SAMUEL WARNER, plaintiff in equity,
vs.
ADAMS DANIELS et al., defendants.

Pursuant to the annexed commission, on the twenty-sixth day of February, A. D. 1845, the day appointed for the purpose, Jacob J. Pendexter, one of the witnesses to whom said annexed interrogatories were propounded, being carefully examined and sworn touching the premises, in answer to said interrogatories testifies as follows, to wit:

To plaintiff's 1st interrogatory he says, that his age is forty years, by occupation a house carpenter, and is acquainted with the value of land in this region; that he is well acquainted with the Ledge farm, or Leather's farm, in Durham, having once owned it, and his father before him; that, in his judgment, said farm is now worth two thousand dollars, since the new barn has been built on it; he thinks the value of said farm is somewhat increased by the ledge on the same being opened, but how much would depend on the owner, as at certain seasons of the year a farmer might get out cellar stones and underpinning stones to advantage; that, in his estimate of the present value of the farm, he includes the ledge, of course; that, in 1835 and 1836, the reputed value of the farm was, he thinks, about two thousand dollars; that the value of the same has not materially increased or diminished.

To the 2d interrogatory he answers, that he bargained said ledge farm on about the twenty-fourth day of July, 1835, to Joseph J. Fales, George C. Thompson, Newell A. Thompson, and James M. Thompson, for forty-four or five hundred dollars; that two thousand dollars was paid about the time of the sale, and the residue secured by a mortgage on the farm. J. J. Fales paid the two thousand dollars, he believes; that, on the 5th of September, 1835, he assigned said mortgage to his father, Edward Pendexter, who afterwards foreclosed said mortgage by entry on the premises, when he cannot precisely state; he knows of said foreclosure, from the fact that his father took possession of the said farm at the time, and retained it until his death, and that since his death, in June, 1843, it has been in possession of his son, James M. Pendexter; and also from having seen a published notice of his entry with a view to foreclose, and from being told by his father that he had foreclosed said mortgage.

To the third interrogatory he says, that his knowledge of quarries or quarrying is not sufficient to enable him to estimate the value of said ledge as a quarry; but thinks it could not be wrought profitably, by a company or corporation, at the present time, nor could it have been at any time within the last ten years, as the point or bed of the ledge is on land adjoining; it is not wrought now by any one.

To the fourth interrogatory he answers, that he resides at present about four miles from said farm, and has resided that distance for the last eighteen months; that, previous to that time, he has resided at his

father's, within a mile of the same, except occasional absences, all his life; that he knows of no peculiarity possessed by this farm that enhances its value over other farms in the neighborhood of the same size and quality.

To the fifth interrogatory he says, that he has no knowledge whether said farm was purchased at auction by any one; that it was owned by his father a number of years previous to the sale to Fales and Thompsons; that his father conveyed it to deponent about the time he sold to said Joseph J. Fales and others.

To the sixth interrogatory he says, that there was a one-story house with an L, an old barn and shed, a small corn house when he sold it, and a blacksmith's shop and stone shed erected by the company afterwards; that he cannot state the value of the buildings precisely; that the house was a comfortable farm house; the barn, shed, and corn house, of trifling value; that the buildings erected by the company, blacksmith shop and stone shed, might have cost one hundred and thirty or forty dollars.

To the 7th interrogatory he answers, that George C. Thompson and others opened the ledge on said farm; thinks the work was done principally before August, 1836; that the aggregate value of work previous to that time might have been fifteen hundred dollars, including the buildings by them erected, (shop and shed,) opening the ledge, and making road.

To the 8th interrogatory he answers, that he cannot tell what amount of rock was taken from said ledge, got out by the company, neither what became of it; nor can he state what amount of rock was got out and on hand previous to August 25, 1836; whatever the amount was, he knows, by report, was sold at auction.

To the 9th interrogatory he says, that he is pretty well acquainted with said Fales; not so much with the Thompsons, although he has frequently seen them; that he had no dealings with them except in the sale of the farm, and, at Fales' request, in procuring teams for opening the ledge; that he received his dues therefor.

To the 10th interrogatory [he says,] that he has no knowledge of the credit and standing and value of the stock of said company, between the periods mentioned; he don't believe said stock would have sold for any thing in Durham; nor never heard of any being offered for sale at any time.

To the 11th interrogatory he says, that he has no knowledge of the tools used about said ledge, August 25, 1836; don't remember seeing any carts, trucks, or any expensive machinery for moving stone about the ledge, although frequently there.

To the 12th interrogatory he answers, that the expense of making the road from the ledge to the county road, prior to August, 1836, he thinks ought not to have cost over one dollar a rod; the distance twenty-five or thirty rods; that said road was made from the dirt and stone removed from the ledge, and was little or no additional expense to opening the ledge.

To the 13th interrogatory he says, that there were some apple and pear trees on said farm in August, 1836, of some value; there were fifteen or twenty Baldwin apple trees, which he procured from Newton a year or two before, of small size, and a half dozen pear trees, which he had engrafted about that time; none had begun to bear fruit; that the trouble and expense was perhaps fifteen dollars of procuring them, setting, &c.

To the 14th interrogatory he says, that he has no knowledge on the subject.

To the 15th interrogatory he says, that he cannot tell whether it is easier or harder to work than other ledges in Durham; that it is no more valuable when got out than other granite; that there are an abundance of granite ledges in Durham, some more and others of less value, with about equal facilities of transportation, that do not enhance the value of the farms on which they are located; he cannot say what farmers might be willing to do in regard to exchange; some might be willing, others not; it would depend on circumstances.

To the 16th interrogatory he says, that he should consider the mowing land, by the acre, more valuable than an acre of the ledge.

And the said Jacob J. Pendexter, in answer to the defendants' cross interrogatories, testifies and says as follows, to wit:

To defendants' 1st cross interrogatory he says, that various considerations would influence him in purchasing a granite quarry; whether it could be wrought profitably; whether well located as to facilities of transportation; whether it would afford large as well as small stones; whether of good rift or otherwise; and whether there was a ready sale for rocks after they got out; all these, and perhaps others, would influence him.

To the 2d he answers and says, that location is an important consideration in estimating the value of a granite quarry.

To the third he answers, that there is a difference in the rift of stone in the same neighborhood, and he supposes that the combinations of the granite would affect its value; knows that some stones wear brighter than others.

To the 4th he answers, before he sold the ledge farm, he carried a piece of the granite to Boston to be tested, and it was pronounced good granite; that he cannot give a scientific analysis of it.

To the 5th he says, that other ledges in Durham have been tested as fully, but don't know to what extent other quarries have been wrought.

To the 6th he says, that he don't know as to the rift; that the quality of such stone as can be got out is good; it is a dark granite—a little darker than the Quincy granite.

To the 7th he answers and says, the location of the Cleft Ledge for working and transportation, is as good as any in Durham; thinks the price of granite abroad would influence the price of a granite quarry, and that a ledge would bring more when granite was high than when it was low.

To the 8th he says, that he has placed no value upon the ledge distinct from the farm; in 1835, when he sold the farm, he attached a value to the ledge on account of its location, and other advantages, and sold it for the best price he could get; that, in attaching a value to the farm since, he is governed by the value of other farms in the neighborhood.

To the 9th he says, that he don't know what other ledges brought in 1835 and 1836.

To the 10th he says, that he was not concerned in any purchase of granite ledges, or in stock in any company, nor knew of the sale of any quarry beside this, except by hearsay.

To the 11th he says, he never saw Dr. Jackson's report.

To the 12th he says, that, in answer to the 2d direct interrogatory, he answered from personal knowledge, and refers to said answer as a full reply to this question; that the deeds and assignment mentioned are to be found at the county register's office for Strafford county; that they are not in his custody.

To the 13th he answers, whether said ledge could be wrought profitably or not, might depend on the price of granite, and the kind of stones needed; at $6 or $7 per ton in Boston or New York, he thinks it could not be profitably worked; that he has no experience in quarrying on his own account; he don't know what it would cost to quarry 100 tons, nor how much it would cost to fit and get it to market.

To the 14th he says, that he refers to his answer to the 5th direct, wherein he gives what facts he had knowledge of.

To the 15th he says, the facts stated in his answer to the 6th direct, he stated from personal knowledge; that he did not, in said answer, fix any value to the buildings; that he has frequently worked on houses, barns, sheds, &c.

To the 16th he says, that he knows George C. Thompson and others opened the ledge from personal knowledge; that the amount of expenditure previous to 1836, (August,) was a matter of opinion, judging from what he saw; that, as to the actual cost of opening the ledge, of testing it, the cost of opening the road, putting the wharf in order, what the shops cost, what the tools or other implements cost, he has no means of knowing; he never saw the bills.

To the 17th he says, that he has not undertaken to say what work was done before and after August, 1836.

To the 18th he says, that the blacksmith's shop could be built for a hundred dollars; the stone shed for $30; the road to the county road thirty dollars; the rest of the estimate might have been expended in and about the ledge, removing dirt and rubbish.

To the 19th he says, that he has not attempted to give any estimates in his answer to the 8th direct interrogatory.

To the 20th he says, that said company is not in arrears to him.

To the 21st he says, that, in his answer to the 10th interrogatory, he disclaimed all knowledge of the credit and standing of said company, as also of the value of the stock.

To the 13th interrogatory he says, that there were some apple and pear trees on said farm in August, 1836, of some value; there were fifteen or twenty Baldwin apple trees, which he procured from Newton a year or two before, of small size, and a half dozen pear trees, which he had engrafted about that time; none had begun to bear fruit; that the trouble and expense was perhaps fifteen dollars of procuring them, setting, &c.

To the 14th interrogatory he says, that he has no knowledge on the subject.

To the 15th interrogatory he says, that he cannot tell whether it is easier or harder to work than other ledges in Durham; that it is no more valuable when got out than other granite; that there are an abundance of granite ledges in Durham, some more and others of less value, with about equal facilities of transportation, that do not enhance the value of the farms on which they are located; he cannot say what farmers might be willing to do in regard to exchange; some might be willing, others not; it would depend on circumstances.

To the 16th interrogatory he says, that he should consider the mowing land, by the acre, more valuable than an acre of the ledge.

And the said Jacob J. Pendexter, in answer to the defendants' cross interrogatories, testifies and says as follows, to wit:

To defendants' 1st cross interrogatory he says, that various considerations would influence him in purchasing a granite quarry; whether it could be wrought profitably; whether well located as to facilities of transportation; whether it would afford large as well as small stones; whether of good rift or otherwise; and whether there was a ready sale for rocks after they got out; all these, and perhaps others, would influence him.

To the 2d he answers and says, that location is an important consideration in estimating the value of a granite quarry.

To the third he answers, that there is a difference in the rift of stone in the same neighborhood, and he supposes that the combinations of the granite would affect its value; knows that some stones wear brighter than others.

To the 4th he answers, before he sold the ledge farm, he carried a piece of the granite to Boston to be tested, and it was pronounced good granite; that he cannot give a scientific analysis of it.

To the 5th he says, that other ledges in Durham have been tested as fully, but don't know to what extent other quarries have been wrought.

To the 6th he says, that he don't know as to the rift; that the quality of such stone as can be got out is good; it is a dark granite—a little darker than the Quincy granite.

To the 7th he answers and says, the location of the Cleft Ledge for working and transportation, is as good as any in Durham; thinks the price of granite abroad would influence the price of a granite quarry, and that a ledge would bring more when granite was high than when it was low.

To the 8th he says, that he has placed no value upon the ledge distinct from the farm; in 1835, when he sold the farm, he attached a value to the ledge on account of its location, and other advantages, and sold it for the best price he could get; that, in attaching a value to the farm since, he is governed by the value of other farms in the neighborhood.

To the 9th he says, that he don't know what other ledges brought in 1835 and 1836.

To the 10th he says, that he was not concerned in any purchase of granite ledges, or in stock in any company, nor knew of the sale of any quarry beside this, except by hearsay.

To the 11th he says, he never saw Dr. Jackson's report.

To the 12th he says, that, in answer to the 2d direct interrogatory, he answered from personal knowledge, and refers to said answer as a full reply to this question; that the deeds and assignment mentioned are to be found at the county register's office for Strafford county; that they are not in his custody.

To the 13th he answers, whether said ledge could be wrought profitably or not, might depend on the price of granite, and the kind of stones needed; at $6 or $7 per ton in Boston or New York, he thinks it could not be profitably worked; that he has no experience in quarrying on his own account; he don't know what it would cost to quarry 100 tons, nor how much it would cost to fit and get it to market.

To the 14th he says, that he refers to his answer to the 5th direct, wherein he gives what facts he had knowledge of.

To the 15th he says, the facts stated in his answer to the 6th direct, he stated from personal knowledge; that he did not, in said answer, fix any value to the buildings; that he has frequently worked on houses, barns, sheds, &c.

To the 16th he says, that he knows George C. Thompson and others opened the ledge from personal knowledge; that the amount of expenditure previous to 1836, (August,) was a matter of opinion, judging from what he saw; that, as to the actual cost of opening the ledge, of testing it, the cost of opening the road, putting the wharf in order, what the shops cost, what the tools or other implements cost, he has no means of knowing; he never saw the bills.

To the 17th he says, that he has not undertaken to say what work was done before and after August, 1836.

To the 18th he says, that the blacksmith's shop could be built for a hundred dollars; the stone shed for $30; the road to the county road thirty dollars; the rest of the estimate might have been expended in and about the ledge, removing dirt and rubbish.

To the 19th he says, that he has not attempted to give any estimates in his answer to the 8th direct interrogatory.

To the 20th he says, that said company is not in arrears to him.

To the 21st he says, that, in his answer to the 10th interrogatory, he disclaimed all knowledge of the credit and standing of said company, as also of the value of the stock.

To the 22d he says, that, in his said answer, he did not undertake to give any estimate of the tools and machinery used by said company.

To the 23d he says, that he never built such a road; but has worked on new roads, and would have been willing to have built said road for a dollar per rod.

To the 24th he says, that, in his answer to the 14th interrogatory, he stated that he had no knowledge [upon] the subject, and so says now.

To the 25th he says, that he did estimate the Cleft Ledge higher in 1836 than in 1833 and 1834. There was a belief, after Fales and Thompson bought it, that it possessed more value than was attached to it before, and more than it is now considered to be worth.

To the 26th he says, that good granite, well situated, is worth something in this neighborhood; that he should not sell a good granite quarry as cheap by the acre as pasture or mowing land, if it was well located.

To the 27th he says, that he should be unwilling to sell the quarry, as now opened, as cheap by the acre as some other parts of the farm; of course he attaches some special value to it.

To the 28th he answers, that Durham is ten miles from Portsmouth; there is not much granite used at Portsmouth now; the facilities for transportation are very good by water.

To the 29th he says, that Jona. P. Bishop is a man he never saw, to his knowledge.

J. J. PENDEXTER.

All the foregoing answers were reduced to writing by me, and were subscribed and sworn to by said J. J. Pendexter, before me,

J. A. RICHARDSON,
Commissioner and Jus. Peace.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts:

SAMUEL WARNER, plaintiff in equity,
vs.
ADAMS DANIELS et al., defendants.

Pursuant to the annexed commission, on the seventh day of March, A. D. 1845, the day appointed for the purpose, Daniel Mothes, one of the witnesses to whom said annexed interrogatories were propounded, being carefully examined and sworn, touching the premises, in answer to said interrogatories, testifies as follows, to wit:

To plaintiff's 1st interrogatory he answers, that his age is sixty-seven years, and is by occupation a farmer, and acquainted with the value of land in the neighborhood of his residence; that he is well acquainted with the Ledge farm or Leather's, in Durham, having frequently seen it for many years; that, including the ledge, he estimates said farm to be worth two thousand dollars; whether said farm is increased by reason of the ledge on it would depend on the purchaser, if a man wished to devote a portion of time to getting rocks, the ledge on said farm might

be a consideration, otherwise not; that, in his judgment, said farm was not worth more in the years 1835 and 1836 than it now is, ledge included; that the value of said farm has not essentially changed for the last ten years, except the erection of a new barn and shed may have enhanced its value a little, erected by Edward Pendexter within two or three years.

To the 2d interrogatory he says, that he did not sell said farm, and only knows of the other matters enquired about from common report.

To the third interrogatory he answers, that he has such knowledge of quarries, and of the business of quarrying, and of this said ledge and Ledge farm, as to enable him to estimate the value of said ledge as a quarry; that, in his judgment, said ledge was of very little value on the first of September, or at any time since; that no company or corporation could work it profitably now, or at any time within the last ten years; that it would not pay the expense of quarrying; that if there was demand for stone, a few might be obtained there, but thinks it would cost as much as they would come to; that said ledge is not wrought by any one now.

To the 4th interrogatory he answers, that he resides about two miles from said Ledge farm, and has resided as near said ledge for the last forty years; that said farm and ledge does not possess any peculiar qualities that give to them any enhanced value over a great majority of the farms in Durham; that said farm is the poorest on the river.

To the 5th interrogatory he says, that he only knows that Edward Pendexter owned said farm a number of years before the supposed sale to Fales and others, and always understood that he bought it at auction; what he paid for it he don't know; neither can he state the year when he bought it.

To the 6th interrogatory he says, that, on the 25th August, 1836, the buildings on said farm consisted of a one-story house, an old barn and shed, and he don't know but a corn house; thinks he should value the house four or five hundred dollars; the old barn, and shed, and corn house at fifty dollars; that the company, he thinks, erected a blacksmith shop and a stone shed on said farm, previous to August, 1836, which might have cost one hundred and thirty or forty dollars.

To the 7th interrogatory he says, that there has been work done by a company, styling themselves the Cleft Ledge Granite Company, in opening a ledge on said farm; that said work was done principally before August 25, 1836; that he cannot undertake to state what the aggregate value of the work was before that time; that in the way it was managed the whole value of work in opening said ledge previous to that time, might have been four or five hundred dollars; at any rate it ought not to have exceeded that sum.

To the 8th interrogatory he says, that he cannot state what amount in value was the rock got out and taken from said ledge; neither can he state what was done with all said rock, except that he took from said company's wharf, in Durham, about thirty tons of stone, in a gondola, to Portsmouth, to be shipped on board a schooner bound to New York;

what said rock sold for he don't know; that he was employed to freight said stone by George C. Thompson, the company's agent; that he cannot state the amount of rock got out, and on the premises about August 25, 1836; but that he attended afterwards an auction sale of the same, and that he, with his brother, bought the most of them; thinks the amount of sales was about one hundred and fifty dollars.

To the 9th interrogatory he says, that he had some acquaintance with George C. Thompson; never saw Fales to his knowledge; said Thompson was the agent here of a company styled the Cleft Ledge Granite Company; that he was employed by said Thompson to freight about thirty tons of granite, as mentioned in his last answer, to Portsmouth, and that for freighting the same he has never been paid; the amount of his bill was $12.

To the 10th interrogatory he answers, that, from the knowledge he had of the credit and standing of said company, betwixt said periods, he says they were low; that stock in said company would not have sold for anything in Durham at any time; never heard of any of said stock being offered for sale in Durham.

To the 11th he answers, that he cannot say what was the value of the tools and implements used by said company, August 25, 1836; as to carts, trucks, or expensive machinery, they never had any.

To the 12th interrogatory he says, that a fair expense for making said road would be a dollar a rod, as the same was made; that said road is from twenty to thirty rods; and made from the dirt and rubbish removed from off the ledge; and the making of said road could not have been much additional expense to opening the ledge, as the dirt could be as easily deposited on the road as any where else.

To the 13th interrogatory he says, thinks there were a few grafted trees on said farm in August, 1836, but of trifling value; can't say how much.

To the 14th interrogatory he says, that all his knowledge respecting the company freighting rocks to New York, he has stated in his answer to the 8th interrogatory; that the vessel, on board of which said rocks were shipped, was less than one hundred tons, he thinks.

To the 15th interrogatory he says, that said ledge is harder to work and hammer than some others in town, and no better after got out than others; that there are an abundance of granite ledges in Durham, some of more and others of less value than the Cleft Ledge, with equal facilities of transportation, that are not esteemed by farmers in Durham as enhancing the value of their farms materially; some would be willing to exchange ledges for soil, and perhaps some would not.

To the 16th interrogatory he says, that he esteems the arable and mowing land, on said Cleft Ledge farm, the most valuable part by the acre.

And the said Daniel Mathes, in answer to the defendants' cross interrogatories, testifies and says, as follows, to wit:

To defendants' 1st cross interrogatory he says, that, among other considerations, he esteems a near and ready market for rocks a most impor-

tant consideration; that the quality of the stone, the ability of the quarry to furnish large blocks, and easy rift, would also influence him in buying a quarry; that in his estimate of the farm he has taken these circumstances into consideration, so far as they apply to the Cleft Ledge.

To the 2d he answers, that the location of a granite quarry is a great item to be considered in estimating its value.

To the 3d he says, that there is a great difference in the rift of stone in the same neighborhood; and a choice in ledges for the different combinations of mica, quartz, and feldspar; that some stone wears brighter than others.

To the 4th he says, that he don't feel himself capable of testing granite scientifically, so as to be able to give an analysis of it; but that he knows good from poor granite when he sees it; that for the last thirty years he has dealt pretty largely in getting and selling granite.

To the 5th he says, that other ledges in Durham have been as fully tested, and operated on more extensively.

To the 6th he says, that the Cleft Ledge is not very good rift, the quality of the stone is good; a little darker perhaps than the Quincy granite; 't is a dark granite.

To the 7th he says, that the location of the Cleft Ledge is better for transportation than most ledges in town, but less favorable for working; that the price of granite in New York and Boston ought not to influence the value of a granite quarry here; for the reason that stone can be more easily quarried and got to market from Cape Ann and Quincy, than from this place; that a ledge, if well located near a steady market, would bring more when granite was high, than when it was low.

To the 8th he says, that he has not estimated the Cleft Ledge apart from the farm; that in estimating the farm and ledge together, he did so by comparison with other farms that have been sold in the neighborhood, and by the value which has generally attached to it.

To the 9th he says, he don't know at what prices good granite ledges, well located, were held, or sold at in 1835 and 1836; don't know what was paid for the Kennebunk, or Blue Hill Ledges; that in 1835 and 1836, real estate, and he don't know but ledges in particular, were held high in those years; never heard of any ledges being sold as high as $50,000.

To the 10th he says, that he was not concerned in the purchase of any granite ledges, nor knowing to the sale of any other quarry besides this, to an incorporated company.

To the 11th he says, that he never saw Dr. Jackson's report.

To the 12th he says, that he knows nothing of the facts inquired about in the 2d direct interrogatory, except as to the sale, and in his answer has so stated.

To the 13th he says, that whether said ledge could be wrought profitably, would depend on the price of granite, and the kind of rock wanted; that he has his doubts whether granite from this ledge could be delivered in Boston at 6 or 7 dollars per ton, and pay a profit; that he has experience in quarrying on his own account; that for thirty years

he has done more or less at the business; that it would cost $75 to quarry a 100 tons of granite there; that to fit it for market $162; to get it to Boston from the ledge $400; these estimates are founded on his own experience.

To the 14th he says, he stated in his answer to the 5th direct, that he did not know the facts inquired about, except the ownership of Edward Pendexter.

To the 15th he says, that in his answer to the 6th direct interrogatory, in regard to the buildings on said farm, he spoke from personal knowledge; in estimating the value of said buildings, he took into consideration the great age of the house, it having been built long before his memory, its size and condition, and the value of a new house of the same size, which he estimates at $800; that the barn and shed were so old and worthless, that it became necessary to remove them, and substitute new ones, and could have been built of trifling value; that he don't know what said buildings cost, and cannot know; that he has built houses and barns, and other buildings, though never such buildings, in all respects, as the Leather's buildings; but that such has been his experience, he feels competent to estimate the cost of buildings with some accuracy; that in estimating the value of said buildings, he was not confined to any particular period of time; their value has not varied materially for the last ten years, except in the matter of a new barn and shed, mentioned in a previous answer.

To the 16th he says, that he knows that work was done on said farm in opening a ledge, from personal inspection, by the Cleft Ledge Granite Company, so styled; and that said work was done principally before August, 1836; that he could not state what was the aggregate value of the work before that time; that the value of the work in opening the ledge, as stated by him, is a matter of opinion founded on his experience and knowledge of such business, and this is all he knows in relation to the matter inquired about; never has seen any bills of the same.

To the 17th he says, that in his answer to the 8th direct interrogatory, he has given all the information he has on the subject.

To the 18th he says, that he has not undertaken to testify to the cost of the outlays there previous to August 25, 1836, or at any time.

To the 19th he says, that he did not attempt to give estimates in his 8th answer, except in the amount of stone freighted by himself from Durham to Portsmouth.

To the 20th he says, that said company owe him for freighting thirty tons of granite to Portsmouth, $12, as before stated; and this, he thinks, was all the dealings he had with them.

To the 21st he answers, that his knowledge of the credit and standing of said company betwixt the periods named, was founded in part from his own experience, in being unable to get his small dues, and from having heard John T. Emerson say that he found it difficult to get pay of them, and from hearing others express their distrust of said company; who they were, he cannot now name; that he has not said what

the value of said stock was abroad; his opinion of its value was confined to Durham.

To the 22d he says, that he made no estimate of tools, in his answer to the 11th direct.

To the 23d he says, that he has built roads similar to the road inquired about, and knows the cost from his own experience; cannot say what he would pay the company's bill for, for building said road, but that he would undertake to make as good a road for a dollar per rod.

To the 24th he says, that he can only refer again to his answers to the 8th and 14th direct interrogatories, for all his knowledge of the subject inquired about.

To the 25th he says, that he don't now remember that he estimated said ledge in 1836; thinks there was a belief that said ledge possessed more value about the time of the company's operations, than before or since.

To the 26th he says, that good granite, well situated, and affording facilities for operating, is worth something in this neighborhood; that he would not sell a good granite quarry as cheap by the acre as pasture or mowing land, if well located.

To the 27th he says, that he should not sell the Cleft Ledge so cheap by the acre as the other part of the farm, although he don't attach much value to it.

To the 28th he says, Durham is distant ten miles from Portsmouth; that but very little granite is used there; the facilities are good for transporting to Portsmouth by water in gondolas.

To the 29th he says, that a year and a half ago, a man called at my house to make inquiries respecting the matters testified to in this deposition; his name I don't know; the particular inquiries that he made, he can't now state.

DANIEL MATHES.

All the foregoing answers were reduced to writing by me, and were subscribed and sworn to by said Daniel Mathes before me.

J. A. RICHARDSON,
Commissioner and Jus. Peace.

Circuit court of the United States, district of Massachusetts, in equity.

SAMUEL WARNER, plaintiff,
vs.
ADAMS DANIELS et al., defendants. } In equity.

Pursuant to the annexed commission, on the fourth day of March, A. D. 1845, the day appointed for the purpose, John T. Emerson, one of the witnesses to whom said annexed interrogatories were propounded, being carefully examined and sworn touching the premises, in answer to said interrogatories, testifies as follows, to wit:

To plaintiff's 1st interrogatory he answers, that his age is fifty-five years, by occupation a farmer, and is acquainted with the value of land

in the region of his residence; has known the Ledge farm, or Leather's farm, in Durham more than thirty years, lives within sight of a part of it, and sees it every day, when about home; the value of said farm is about two thousand dollars; thinks the value not essentially increased by reason of the Cleft Ledge situated on the same; that he includes said ledge in his estimate of the value of said farm; that in September, 1835, said farm might have been worth two thousand dollars, ledge and all; that neither before or since could it have been sold for more to any person acquainted with the same, in his judgment; that said farm was worth no more with or without the ledge, August 25th, 1836; the value of said farm has been somewhat increased since Sept. 1, 1835, by the erection of a new barn on the same, by Edward Pendexter, about three years ago, and also by about thirty feet of new shed.

To the 2d interrogatory he says, that he did not sell said farm, and knows of the sale of said farm to Joseph J. Fales and others, about September, 1835, from current report, and knows nothing about the bargain except from report; that he knows that Edward Pendexter was in possession of said farm at his death, and had so been in possession for a number of years previous.

To the 3d interrogatory he says, that he has not much knowledge of quarries, or the business of quarrying; that he has worked a little at the business, but will not undertake to estimate the value of said ledge as a quarry; but for himself, he has never attached much, if any value to said ledge; that no company or corporation, in his judgment, could work it profitably now, nor could any company or corporation have wrought it profitably at any time within ten years; thinks it a matter of doubt whether it would pay the expense; it is not now wrought by any one.

To the 4th interrogatory he says, that he resides within a hundred rods of said ledge and farm, and has resided as near for the last twenty-four years; that said farm possesses no peculiarity that gives it an enhanced value over any other, or a majority of the farms in Durham.

To the 5th interrogatory he says, that he does know that said farm was purchased at auction by Edward Pendexter, previous to Sept. 1, 1835; that he attended said auction when said Pendexter bid it off; it was sold by the administrator of Robert Leather's, and sold, according to his impression, for about sixteen hundred dollars; said farm was so sold about sixteen years ago.

To the 6th interrogatory he says, the same buildings were on said farm in August, 1836, as now, with the exception of the new barn and shed, mentioned in a previous answer; the house is a one-story house with an L; it is an old concern, much older than he has any recollection; to stand on the farm, he thinks said house may be worth three hundred dollars; the other buildings consisted of an old barn and shed, since torn down, and a small corn house, all perhaps worth fifty dollars; that in addition to the above buildings the Ledge Company erected a blacksmith's shop, and a stone shed, on said place.

To the 7th interrogatory he answers, that there was work done in

opening a ledge on said farm, by George C. Thompson, and others, styling themselves the Cleft Ledge Granite Company, principally before August 25, 1836; that in his opinion the aggregate value of the work done, including every expense, previous to that time, would exceed two thousand dollars; in this estimate he includes the wharf, the road to it, opening the ledge, getting out stone, and every thing.

To the 8th interrogatory he answers, that he cannot state what amount in value of rock was taken from said ledge; thinks a part of said rock was taken into a gondola at their wharf, and sent down river, but what they sold for he don't know; another part he thinks were sold to Joseph Chesley, 3d, by George C. Thompson, for forty dollars; that the rock got out and left on the premises in August, 1836, was sold at auction afterwards, for about one hundred and fifty dollars, as he understood.

To the 9th interrogatory he says, he was acquainted with said Fales a little in 1835 and 1836; said Fales staid at his house a few nights; knew George C. Thompson, and has seen Newell A. Thompson a few times; and knew them and others as the Cleft Ledge Granite Company. The first contract he made with Joseph J. Fales was for a strip of land for a road to the river, and a wharf lot on the flats, for which he was to pay him as rent, twenty-five dollars per year, for two years; that before the expiration of one year, he thinks, he sold said strip of land to said company, gave up the original contract for rent, and gave a deed to said company, and took said company's notes for six hundred dollars, which said notes he now holds, no part of them having been paid; that he contracted with George C. Thompson for the board of his hands at work on the ledge; also for the board of hands working on the road with William A. Thompson, his father; after the incorporation of said company he changed, by the direction of George C. Thompson, his board bills to said company, for which said company is now indebted to him in the sum of one hundred and fifty dollars.

To the 10th interrogatory he says, that he is unable to state what the credit and standing of said company was betwixt said periods; did not hear or know much about them; neither does he know any thing of the value of the stock at that time; don't think said stock would have sold for any thing in Durham at any time; never knew of any being sold, or offered for sale in Durham at any time, except Mr. A. D. Capen, a teacher in Boston, offered him some, which he declined.

To the 11th interrogatory he says, that he cannot say what the value of the tools and implements used by said company was, in August, 1836; that they had no carts, trucks, or any other machinery for moving stone; when they moved stone, they hired it done.

To the 12th interrogatory he says, that the expense of building a road from the ledge to the county road must have been very trifling; thinks not more than a dollar per rood; that it was made of the dirt and chips taken off the ledge in opening it, which could be as easily deposited on said road as anywhere else; thinks said road was not much additional expense to opening the ledge; the length of said road is about twenty-five rods.

To the 13th interrogatory he says, there were no fruit trees on said farm in August, 1836, of much value; thinks about the house there were a few grafted trees, very young.

To the 14th interrogatory he says, that some rocks were sent from the wharf, but where to he don't know; cannot state the quantity; said rocks were taken from the wharf in a gondola, and put on board a small vessel down river, and this is all he knows about it.

To the 15th interrogatory he says, that he has always understood that the ledges worked harder on the north side of our river than on the south; that the Cleft Ledge is on the north side; rocks taken from the Cleft Ledge are no more valuable than rocks taken from other ledges in town; that there is an abundance of granite ledges in Durham, equally as good, with as good facilities for transportation, and as easily wrought, that are not esteemed by Durham farmers as increasing the value of their farms; thinks some farmers would be willing to exchange ledges for tillage, or mowing land, and others not; it would depend on situation.

To the 16th interrogatory he says, that the most valuable land on the ledge farm is the mowing and arable; and if free of ledges it would be as well worth three thousand dollars, as two now.

And the said John T. Emerson, in answer to the defendants' cross interrogatories, testifies and says, as follows, to wit:

To defendants' 1st cross interrogatory he says, that he should consider the situation of a quarry important, its nearness to a ready market; whether the rocks could be conveniently transported; whether it could be worked easily or otherwise; and whether the granite was of approved quality, the size of sheets, &c.; all these considerations he should deem important, and go to fix a value to a quarry.

To the 2d he answers, that the location of a quarry is a great item to be considered in estimating its value.

To the 3d he says, that there is a great difference in the rift of stone in the same neighborhood; that there is a difference in the combination of granite, and a choice; that some granite wears brighter than other; that the Durham granite is of uniform quality, so far as he has seen it.

To the 4th he says, that he has no experience in testing granite; that he never tested the Cleft Ledge, and can give no analysis of it. All he can say is that it is good granite, and corresponds in appearance to all the Durham granite.

To the 5th he answers, that other ledges in Durham have been tested as fully, (not so scientifically perhaps) and operated upon to a much greater extent.

To the 6th, the Cleft Ledge is not called very good rift; the quality is good; the sheets are rather thin; it is a dark granite; is not acquainted with the Quincy granite.

To the 7th he says, the location of the Cleft Ledge is no better for working than other ledges in town, and no better on account of ease of

transportation than some others; thinks the price of granite abroad would influence the value of a quarry; that a ledge would bring more when granite is high than when low.

To the 8th he says, that he has not estimated the ledge distinct from the farm; that in estimating the farm and ledge, he stated its value at two thousand dollars, from the common opinion of its value for the last ten years, and by a comparison with other farms in the neighborhood that have been sold.

To the 9th he says, that he don't know what good granite ledges sold for in 1835 and 1836, or what held at; has no knowledge of any sales except the Cleft Ledge.

To the 10th he says, that he never was concerned in any purchase of granite ledges, or in stock in any company.

To the 11th he says, that he never saw Dr. Jackson's report, to his recollection.

To the 12th he says, that he knows nothing of the facts inquired about in the 2d direct interrogatory, otherwise than he has stated in his said answer.

To the 13th he says, that he has stated that, in his judgment, the Cleft Ledge could not be wrought profitably by a company, and he still so thinks, if the price at Boston and New York was $6 to $7 per ton; because he has always understood from the workmen that the rift was not good—too many seams and offsets; has no experience in quarrying on his own account, and cannot state what the cost would be to quarry 100 tons granite, or fit it for market; he thinks it would cost probably more than two dollars per ton to get it to Boston, but his estimates are not founded on experience.

To the 14th he says, that what facts he has stated, in his answer to the fifth direct interrogatory, he stated from personal knowledge.

To the 15th he says, what he has stated, in answer to the 6th direct enquiry, he stated from personal knowledge; that, in his estimate of the value of the buildings, he took into account the great age of the house, and what a new one would cost of the same dimensions, and the condition of the old barn and shed; that he ca n have no knowledge of the cost; that he has built a house, but not such a house as the Leather's house.

To the 16th he says, that, in answer to the 7th direct interrogatory, he expressed an opinion as to the outlay previous to August 25, 1836, and this opinion was founded on the knowledge he derived from observing operations from time to time; that he never saw the bills, and don't pretend to state with accuracy.

To the 17th he says, that he has not undertaken to state what work was done before and what after August 25, 1836, but that the work done was done principally before August, 1836; never saw any bills.

To the 18th he says, that he has given no estimates in answer to the 8th direct interrogatory; that he knows the price paid by Chesley for stone from hearsay; what the price the rocks sold for at auction he

stated from having been present at the sale, and that the amount of sales was then stated.

To the 20th, he says, as requested, he states his account against said company, debt and credit, to November, 1836, and also a copy of the notes he holds against said company, and annexes the same to this deposition; that both said notes and accounts remain due and unpaid.

Cleft Ledge Granite Company to John T. Emerson, Dr.

1836.	To boarding the men while working on the Cleft Ledge, in the month of September, 1836, 186 days, at 36 cts. per day - - - -		$66 96
	To 6 days' work on the ledge, at $1 28 - -		7 68
Sept. 8.	To wagon to Barrington twice - - -		60
Oct.	To boarding the men, in October, 126 days, at 36 cts. per day - - - - -		45 36
Nov.	To boarding the men, in November, 88 days, at 36 cts. per day - - - - -		31 68
			$152 28
Cr.	By 26½ lbs. iron, at 6 cts.; 3¼ lbs. steel, at 15 cts. - - - - -	$2 18	
	By 2 bushels coal, 25 cts.; 1 do. sea coal, 52	77	
			2 95
			$149 33

BOSTON, *October* 10*th*, 1836.

For value received, the president, directors, and company of the Cleft Ledge Granite Company promise to pay John T. Emerson, or his order, two hundred dollars and interest, in thirty days.

GEORGE ODIORNE, *President.*

BOSTON, *October* 10*th*, 1836.

For value received, the president, directors, and company of the Cleft Ledge Granite Company promise to pay John T. Emerson, or his order, two hundred dollars and interest, in one year.

GEORGE ODIORNE, *President.*

BOSTON, *October* 10*th*, 1836.

For value received, the President, Directors, and Company of the Cleft Ledge Granite Company promise to pay John T. Emerson or his order, two hundred dollars and interest, in two years.

GEORGE ODIORNE, *President.*

To the 21st he answers, that he can only refer to his answer to the 10th direct interrogatory for all his knowledge on the subject.

To the 22d he answers, that he has never attempted to give an estimate of the value of the tools and implements used by said company.

To the 23d he says, that he never built such a road, but has helped

repair and make roads, and knows something about the expense; he cannot say what he would pay the bills for building that road for, but would engage to build a road like it, with the same facilities, for a dollar per rod.

To the 24th he says, that what he has stated, in answer to the 14th direct, he stated from his own knowledge; who shipped said rocks he don't know.

To the 25th he says, that he did estimate said ledge higher in 1836 than in 1833 and 1834; thinks there was a general belief that there was more value in that ledge than had been before known, and also more than it is now considered to be worth.

To the 26th he says, that good granite, well situated, and affording facilities for operating, is worth something in his neighborhood now; if well located, thinks he should not now sell a good granite quarry as cheap by the acre as pasture or mowing land.

To the 27th he says, with his present knowledge, he would sell, if he owned the Cleft Ledge Granite quarry, as cheap by the acre as some mowing land on said farm; that he don't now attach any special value to it.

To the 27th he answers, that Durham is ten miles from Portsmouth; there is not much granite now used at Portsmouth; the facilities for transportation to Portsmouth are good by water communication for gondolas and vessels of light draft.

To the 29th he answers, that a man called at his house, one evening within two years, and asked him some questions respecting this ledge concern, but has no particular recollection what they were; neither does he know who the man was; that he knows of no such man as Jonathan P. Bishop.

JOHN T. EMERSON.

All the foregoing answers were reduced to writing by me, and were subscribed and sworn to by said John T. Emerson.

Before me, J. A. RICHARDSON,
Commissioner and Justice of Peace.

Circuit court of the United States, in equity, district of Massachusetts.

SAMUEL WARNER, plaintiff,
vs.
ADAMS DANIELS and al., def'ts. } In equity.

Pursuant to the annexed commission, on the twenty-eighth day of February, A. D. 1845, the day appointed for the purpose, George Frost, one of the witnesses to whom said annexed interrogatories were propounded, being carefully examined and sworn touching the premises, in answer to said interrogatories, testifies as follows, to wit:

To plaintiff's first interrogatory he says, that his age is forty-four years, by occupation a trader, and is somewhat acquainted with the value of land in the neighborhood where he resides, and has often seen the Leather's or Ledge farm, in Durham, and thinks the value of it now

to be two thousand dollars; does not think the value of it much increased by reason of the Cleft Ledge, so called, on the same; in his estimate of the present value of the farm, he includes the ledge; says the value of the farm has not materially changed for the last ten years, ledge included, except it has been by a new barn, erected within two or three years past; that he won't undertake to say how much more said farm is worth with than without the ledge, but thinks said ledge adds but very little to its value.

To the 2d interrogatory he says, that he did not sell said Ledge farm, and knows nothing of the matters therein inquired about, except by report; thinks he saw a notice of foreclosure of the mortgage of said farm, by Edward Pendexter, published in the *Dover Enquirer*.

To the 3d interrogatory he answers, that he has not such knowledge of quarries, and of the business of quarrying, as to enable him to estimate with any accuracy the value of any ledges, or quarries, or whether this might be wrought profitably or not; thinks it could not by a company or corporation; he don't know that said ledge has been wrought since George C. Thompson and others wrought it.

To the 4th interrogatory he says, that he resides about three fourths of a mile from said farm and ledge, and has resided as near for about forty years; that he knows of no peculiarity that gives it an enhanced value over most other farms in Durham; that persons perhaps, accustomed to stone work, might attach a small additional value to it on account of the ledge.

To the 5th interrogatory he says, that he don't know that said farm was ever purchased at auction prior to the sale to Fales and others.

To the 6th interrogatory he says, that in August, 1836, there was a decent one-story house, and an old barn, and might have been some out houses, but never took such particular notice of them as to justify him in an expression of an opinion as to the value of them; that the company erected a blacksmith's shop and stone shed, on said farm, previous to that time.

To the 7th interrogatory he answers, there was work done by the Cleft Ledge Company, as he supposes, in opening the ledge on said farm, previous to August, 1836; as to the aggregate value of the work done before that time, or the whole value of the work in opening and operating said ledge previous to this time, he is of opinion that it must have exceeded two thousand dollars.

To the 8th interrogatory he say, that he cannot state what amount of rock (when got out) was taken from said ledge, nor what was done with it, nor what it sold for, (if sold;) neither can he state what amount of rock there was got and on the premises on the 25th of August, 1836; that he attended an auction sale of all the rocks that were got out and left by the company as he supposed previous to that time, and that the same brought about one hundred and fifty dollars.

To the 9th interrogatory he says, that he is acquainted with George C. Thompson, but not acquainted with said Fales, or either of the brothers of said Thompson. That he was one of the firm of G. & W.

P. Ffrost; had dealings with a company styled the Cleft Ledge Granite Company, and that he received his dues of them; the dealings were in goods from their store.

To the 10th interrogatory he answers, that he had not a full knowledge of the credit, standing, and value of the stock of said corporation between the periods mentioned; he thinks that the stock would not have sold for anything in Durham between said periods, or at any time; never heard of any of said stock being sold, or offered for sale, in Durham, that he can now recollect.

To the 11th interrogatory he says, that he has no means of knowing the value of the tools and implements used by said company in August, 1836, nor whether said company had any carts, trucks, or other machinery for moving stone.

To the 12th interrogatory he says, that a fair expense of building said road should not exceed three dollars per rod; thinks the distance from the ledge to the county road about thirty rods; his impression is, that said road was made from the dirt and chips taken away in the course of opening and working the ledge, and that no better way could have been adopted to get rid of them; and that the making of said road could not have been much additional expense to opening the ledge.

To the 13th interrogatory he says, that he never noticed the fruit trees, if there were any of value on said farm, and can of course give no opinion of their value.

To the 14th interrogatory he says, that he can give no answers to the questions contained in said interrogatory, having no knowledge on the subject of said questions.

To the 15th interrogatory, he thinks that he has heard it reported that said ledge worked harder than some others in Durham, and that it is in nowise superior to the granite from other ledges; that he should suppose there were other ledges equally as good, perhaps better, but few where the facilities for transportation are so good; that there are an abundance of granite quarries in Durham that don't add very much to the value of the farms; that the best of the ledges farmers would not be willing to exchange for land lying between ledges, but most of the ledges they would be willing to exchange for the same extent of soil.

To the 16th interrogatory he says, that he should consider the field belonging to said farm more valuable without the Cleft Ledge, and other ledges, than with them.

And the said George Ffrost, in answer to the defendants' cross interrogatories, testifies and says as follows, to wit:

To defendants' 1st cross interrogatory he says, that he should consider the location an important consideration; the quality of the ledge, facilities for transportation, the ease with which it might be wrought, its nearness to a good market, and its ability to furnish large blocks, and to its possessing the usual combinations of quartz, mica, and feldspar, of approved granite; all these considerations he esteems important in estimating the value of a quarry.

To the 2d he answers, that he considers the location a great item in estimating the value of a ledge or quarry.

To the 3d he says, that whether there is a difference in the rift of stone in the same neighborhood he don't know; that he is not sufficiently acquainted with the composition of granite to determine how the different combinations of mica, quartz, and feldspar, affect it; that some stone wears brighter than others.

To the 4th he says, that he has no experience in testing granite.

To the 5th he says, that other ledges in Durham have been tested as fully, and operated upon to a much greater extent than the Cleft Ledge.

To the 6th he says, that he cannot say whether it is good rift or not; considers the quality good after got out; it is a dark granite, like most of the Durham granite; cannot say how it compares with the Quincy granite.

To the 7th he says, that he should consider the location of said ledge not so good for working as many of the ledges in town, but better for transportation than the most of them; thinks the price of granite abroad would influence the price of a granite quarry; that a ledge would bring more when granite is high than when low.

To the 8th he says, that he has not undertaken to estimate said ledge distinct from the farm; that the value of the farm is about the same as in 1836; that real estate in Durham has not increased or diminished in value for ten years last past.

To the 9th he says, that he does not know at what prices any granite ledges in any place were held at or sold for, except the ledge in Durham in 1835 and 1836; that he don't know what was paid for the Kennebunk or Blue Hill ledges.

To the 10th he says, that he was not concerned in any purchase of granite ledges, or in stock in any company; was not knowing to the sales of any other quarry besides this to an incorporated company.

To the 11th he says, that he never saw Dr. Jackson's report to his recollection.

To the 12th he says, that he knows nothing of the facts enquired about, except as he has stated in his answer to the second direct interrogatory.

To the 13th he says, that whether said ledge could be wrought profitably or not by a company would of course depend on the price; that hammered stone nor dimension stone could, in his opinion, be delivered from here, at Boston or New York, for $6 or $7 per ton, profitably; has had no experience in quarrying, but has dealt some in stone; says that he cannot make any accurate calculation of the cost of quarrying a 100 tons of granite, or what it would cost to fit it for market; thinks it would cost two dollars per ton to get it to Boston, but his estimates are not founded on his own experience.

To 14th he says, that he knows nothing of the matters enquired about in the 5th direct interrogatory, and has so stated in his answer.

To the 15th he says, that the facts stated in his answer to the 6th direct interrogatory are from his own knowledge.

To the 16th he says, that the facts testified to in his answer to the 7th direct, he stated from his own knowledge; what the cost of opening the ledge was, what the cost of testing it was, or what the cost of the other items enquired about, he cannot tell, for he has no means of knowing.

To the 17th he says, that he don't undertake to say what work was done before August 25, 1836, and what after.

To the 18th he says, that he did not undertake to estimate the cost of the outlays previous to August 25, 1836, but merely expressed an opinion from the little knowledge he had of the operations, that it must have exceeded two thousand dollars.

To the 19th he says, that he has not attempted to give any estimates, in answer to the 8th interrogatory, except wherein he stated that he attended an auction sale of all the rocks got out, and left by the company, as he supposed, previous to August 25, 1836, and that the same brought about one hundred and fifty dollars; and that they brought about this sum he knows from recollection.

To the 20th he says, that said company is not in arrears to our firm; and whether said company is in arrears to others he does not know.

To the 21st he says, that he answered, to the 10th direct, that he had not a full knowledge of the credit, standing, and value of the stock of said company, between the periods mentioned.

To the 22d he says, that he did not attempt, in his answer to the 11th direct, to give an estimate of the tools and implements belonging to said company.

To the 23d he says, that, in his answer to the 12th direct, he stated that the expense of building said road ought not to exceed three dollars per rod; that he never built such a road, but has had some experience in repairing roads; and although he would not say what he would engage to pay the bills for, he would undertake to build as good a road for three dollars per rod.

To the 24th he says, that, in his answer to the 14th direct, he stated that he had no knowledge of the matters therein enquired about.

To the 25th he says, that he don't recollect of making an estimate of the value of said farm and ledge, in 1836; he might have estimated the farm, on account of the ledge, higher then than in 1833 and 1834; and he thinks there was a general belief, in 1836, that the ledge made the farm more valuable than it was before, or is now considered to be; for before 1835 he did not know, nor does he think that many persons in town knew, that there was a ledge on said farm, from which stones of any value could be obtained.

To the 26th he says, that good granite, well situated, and affording facilities for operating, is worth something in this neighborhood; that he would not sell a good granite quarry as cheap by the acre as pasture or mowing land, if well located.

To the 27th he answers, that if he owned the Cleft Ledge Granite

quarry, he would not sell it *so* cheap by the acre as the other part of the farm; that he does attach some value to said quarry, but very little.

To the 28th he answers, that Durham is distant from Portsmouth ten miles; that there is not much granite used at Portsmouth; that the facilities for transportation to Portsmouth are good; the communication being by water, and the expense about two shillings per ton.

To the 29th he answers, that about two years ago he received a letter, as postmaster, from a man in Massachusetts. making some inquiries respecting the Cleft Ledge Granite Company, and their operations, and that he referred him to sundry persons who had more knowledge on the subject than he had; that he never had any interview with said Bishop, nor any intimation that he would be called on to testify, until so informed by J. A. Richardson, the commissioner, within the last fortnight.

GEORGE FFROST.

All the foregoing answers were reduced to writing by me, and were subscribed and sworn to by said George Ffrost, before me,

J. A. RICHARDSON,
Commissioner and justice of peace.

CIRCUIT COURT OF THE U. S., IN EQUITY,
District of Massachusetts.

SAMUEL WARNER, plaintiff in equity,
vs.
ADAMS DANIELS et al., defendants.

Pursuant to the annexed commission, on the nineteenth day of February, A. D. 1845, the day appointed for the purpose, Seth S. Walker, one of the witnesses to whom said annexed interrogatories were propounded, being carefully examined and sworn touching the premises, in answer to said interrogatories testifies as follows, to wit:

To plaintiff's 1st interrogatory he says, that his age is sixty-five, and by occupation a practical surveyor and draftsman; that he is acquainted with the value of land in and about Durham, N. H., and has seen frequently the Leather's farm, so called in said Durham, and made a survey and plan of the same several years ago for the Cleft Ledge Granite Company. At this time he thinks the farm worth two thousand dollars, and that the value of it has been enhanced by the erection of a new barn within two or three years; that he don't consider the value of said farm increased by reason of the ledge or ledges on the same; and that, in the year eighteen hundred and thirty-five, and about that time, the value attached to said farm, including the ledge on the same, was about fifteen hundred dollars, and that. in his judgment, the above sum was all said farm was worth; and that the value of said farm has not materially increased or diminished since the first day of September, A. D. 1835, except by the erection of the barn above mentioned.

To the 2d interrogatory he answers and says, that he did not sell said farm, nor is he knowing to the sale of it on or about the first day of September, 1835, to Joseph J. Fales and others, except by report;

neither can he answer any other question contained in said interrogatory from personal knowledge, his knowledge relating to matters contained in said interrogatory being derived from common report; that after the reported sale of the farm to Fales and others, he frequently saw men at work on the ledge on said farm, under the direction of George C. Thompson and others.

To the 3d interrogatory he says, that he has frequently been at said ledge, on the Leather's farm, so called, at the time of its being wrought by George C. Thompson and others, and before and since, and that he does not attach any value to said ledge as a quarry, nor never has, for the reason that it cannot be advantageously wrought, to any extent, because the point of the ledge where operations should be commenced to work advantageously, is on lands at several rods distant from the boundary of said Leather's farm, on land belonging to John Kingman, and known as the Steele farm; that he has no knowledge of said ledge being wrought since George C. Thompson wrought it.

To the 4th interrogatory he answers, that he resides about one mile from said farm and ledge, and has so resided for more than thirty years; that he knows of no peculiarity that gives greater value to this farm than other farms of the same quantity of acres and quality of land, in said Durham.

To the 5th interrogatory he says, that when he was first acquainted with said farm, one Robert Leathers owned it, and lived on it, and after his death it fell into the hands of Edward Pendexter; in what way he is unable to say.

To the 6th interrogatory he answers and says, on the 25th day of August, 1836, there was on said farm a one-story house, an old barn, shed, and corn house, the particular dimensions I cannot state; that in his estimate of the value of said farm, stated in his first answer, he included said buildings; that he cannot undertake to give the value of each; that the house was a decent farm house, for a small sized farm like the Leather's farm; that he cannot state what the loss to the owner might have been had they been consumed by fire; the barn and out buildings were of little value.

To the 7th interrogatory he answers and says, there was work done by George C. Thompson and others in opening said ledge. He thinks said work was done principally before August 25, 1836, and that the aggregate value of work done previous to that time, including blacksmith shop and stone shed, might have been from one thousand to fifteen hundred dollars.

To the 8th interrogatory he says, that he cannot state the value of rock taken from said ledge, if any, or what amount of money the same brought, or who sold it; he has no recollection of any being sold by the company; that the rocks got out and on hand in August, 1836, were attached and sold at auction, which auction he attended, for about one hundred and fifty dollars.

To the 9th interrogatory he says, that he has seen Dr. Fales at Durham, but has no acquaintance with him; that he had some acquaint-

ance with George C. Thompson and his father in 1836; that he was employed by said George C. Thompson as agent of the Cleft Ledge Granite Company to make sundry surveys, for which he was paid, and that said company owes him nothing.

To the 10th interrogatory he answers and says, that he has not a full knowledge of the credit and standing of said corporation between said periods; that the value of the stock was the value of the farm mentioned in his first answer; that he never heard of any of said stock being offered in Durham for sale, neither does he believe that any person would have taken a share had it been offered at any price.

To the 11th interrogatory he says, that he cannot state the value of the tools and implements used by said company in August, 1836; that he was frequently at said ledge, and saw hammers, drills, and crowbars, and blacksmith's tools, but the value he cannot state; he has no knowledge of any carts, trucks, or other machinery for moving stone owned by said company, as he never saw any on the premises.

To the 12th interrogatory he answers and says, that the expense of making the road from said ledge to the county road, he thinks was one hundred dollars, prior to August, 1836; that the distance was about twenty-five rods; and said road was made principally from the stones and dirt necessary to be cleared from the foot of the ledge.

To the 13th interrogatory he says, that there were some apple and pear trees on said farm scattered about, but of little or no value, and that in his opinion the value of the farm would not have been diminished had they been taken off.

To the 14th interrogatory he says, that he does not know that said company freighted any rocks to New York, and can give no answers to the questions in said interrogatory.

To the 15th interrogatory he says, that said ledge is reputed harder to drill and hammer than other ledges in town, and in nowise superior to the granite from other ledges; that there are in Durham granite ledges equally as good, with greater or less facilities of transportation, that are not esteemed by farmers in Durham as increasing the value of their farms; he cannot say what farmers might do in regard to exchange of ledges for mowing or tillage land.

To the 16th interrogatory he says, he should consider the mowing land by the acre more valuable than the ledges.

And the said Seth S. Walker, in answer to the defendants' cross interrogatories, testifies and says as follows, to wit:

To defendants' 1st cross interrogatory he says, that the chief consideration in a granite quarry to his mind is, whether it can be wrought profitably; that he should attach value to its location, quality, and facilities for transportation, and ability to afford large stones, to its being good rift, and to its having the usual combinations of quartz, mica, and feldspar, provided there was a ready sale for stone after they were got out, otherwise such a quarry would have no value.

To the 2d he answers and says, that he considers the location an important consideration in estimating the value of a quarry.

To the 3d he answers, that there is a difference in the rift of stone in the same neighborhood; to the other questions he answers affirmatively.

To the 4th he answers and says, that he cannot give an analysis of the Cleft Ledge, in Durham; that he can answer generally that said ledge corresponds in appearance and hardness to other granite which abounds in Durham; he knows of no peculiarity.

To the 5th he answers, that other ledges in Durham have been tested as fully, and operated upon to a much greater extent than said Cleft Ledge.

To the 6th he answers, that he cannot speak of the rift from any personal knowledge; that the quality of the stone is good; thinks the stone a little darker than the Quincy granite.

To the 7th he answers and says, that the location of the Cleft Ledge (so called) is no better for working and transportation than some others in Durham; that if the price of granite was ten dollars the cubic foot in Boston, he should value a quarry of granite of more value in Durham, than if it were but twenty-five cents the cubic foot.

To the 8th he answers and says, that he has only estimated the Cleft Ledge as a part of the farm, attaching no value to the ledge itself; that he estimated the farm in 1836, according to the current value attached to it, compared with other farms.

To the 9th he answers, that he don't know what ledges sold for in 1835 and 1836; neither the Kennebunk or Blue Hill ledges; neither has he knowledge of any sales of ledges, except the Cleft Ledge.

To the 10th he answers and says, that he was never concerned in the purchase of any granite ledges, nor owned stock in any; neither was he knowing to the sale of any other quarry, besides this, to an incorporated company; therefore he cannot answer the residue of the interrogatory.

To the 11th he says, that he never saw Dr. Jackson's report.

To the 12th he says, that he refers to his answer to the second direct interrogatory as the only answer that he can make to this.

To the 13th he answers and says, that if granite was worth $6 and $7 in Boston and New York, it must be quarried and wrought at a very cheap rate here to pay any profit; that he has never quarried any on his own account; that he has no means of stating what the cost would be to quarry 100 tons of granite, or how much to fit or get it to market.

To the 14th he answers and says, that he refers to his answer to the fifth direct, as his answer to this.

To the 15th he says, that in his answer to the 6th direct interrogatory, he spoke from personal knowledge as to the character of the buildings; that he never made any estimate of buildings similar to the Leather's buildings, and, as he never did, he declines guessing.

To the 16th he answers and says, that the ledge was opened, and work done on and about said ledge, he knows from personal knowledge, having seen George C. Thompson and others frequently there at work;

that, in his answer to the 7th direct interrogatory, he stated that the probable outlay in opening said ledge, building a road to the county or Dover road, building a blacksmith shop and stone shed, was a thousand or fifteen hundred dollars; what the cost of testing the ledge, opening the road, putting a wharf in order for the reception of stone, what the shop cost, what the tools cost, what the wheels, drags, drills, guys, ropes, blocks, &c., &c., he has no means of stating, as he never saw the bills.

To the 17th he says, that his estimate of work done before August 25th, 1836, was founded on actual inspection and observation; that he never saw the bills.

To the 18th he answers and says, that the blacksmith shop might have cost one hundred dollars, the stone shed forty dollars, making 25 rods of road, one hundred dollars; the residue of his estimate, to wit, (one thousand or fifteen hundred dollars,) might have been expended in opening and removing dirt and rubbish from the ledge.

To the 19th he says, that he can only give the same answer as given to the 8th direct interrogatory; as to the means of information, in regard to the value of stones got out and on hand in August, 1836, he renews his statement that they sold for about $150, and this he knows from having attended the sale and seen the amount of the same.

To the 20th he says, that said Cleft Ledge Granite Company is not in arrears to him, but paid him for his services, as stated in his answer to the ninth direct interrogatory.

To the 21st he says, that he has not undertaken to state what the credit and standing of said corporation was betwixt the periods mentioned, (August and November, 1836;) what he stated, in relation to the stock, and its value, previous to August, 1836, in his answer to the tenth direct interrogatory, is all he can state in answer to this, except that his testimony in relation to it does not refer to a period later than November, 1836.

To the 22d he answers, that, in his answer to the 11th direct, he did not undertake to give an estimate, tools, &c., used by said company.

To the 23d he says, that he estimated the cost of said road at one hundred dollars, being about twenty-five rods; that he never built such a road; but that his judgment of the cost is formed from observation, having been frequently at the farm when said road was building; that he cannot say what he would pay the bills for, but says he would build such a road for one hundred dollars.

To the 24th he says, that he has not attempted to answer the 14th direct interrogatory, and matters there enquired about, because he has no knowledge on the subject.

To the 25th he answers, that he has never estimated the Cleft Ledge differently, at different times, since he knew it, for thirty years past; that he has never attached any peculiar value to the farm on account of it; he thinks there was a belief that there was more value in that ledge after it came into the hands of the company than before, and more than it is now considered worth.

To the 26th he says, that good granite, well situated, and affording facilities for operating, is worth something in this neighborhood now, but the price is low and demand limited; if he could locate a quarry he should not sell it as cheap by the acre as pasture or mowing.

To 27th he says, that, if he owned the Cleft Ledge Granite quarry, he would sell it as cheap by the acre as the other part of the farm; he attaches no special value to it.

To the 28th he says, that Durham is ten miles from Portsmouth; there used to be a considerable granite used at Portsmouth, but not much now; the facilities for transportation by water are good.

To the 29th he says, that he never saw Mr. Bishop to his knowledge.

SETH S. WALKER.

All the foregoing answers were reduced to writing by me, and were subscribed and sworn to by said Seth S. Walker, before me,

J. A. RICHARDSON,
Commissioner and Justice of the Peace.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

SAMUEL WARNER, plaintiff,
vs.
ADAMS DANIELS et al., defen'ts. } In equity.

Pursuant to the annexed commission, on the eighth day of March, A. D. 1845, the day appointed for the purpose, Valentine Mathes, one of the witnesses to whom said annexed interrogatories were propounded, being carefully examined and sworn touching the premises, in answer to said interrogatories, testifies as follows, to wit:

To plaintiff's 1st interrogatory he answers, that his age is sixty-five years, and by occupation a farmer, and is acquainted with the value of land in the neighborhood of Durham, and in Durham; that he knows the Leather's farm, or Ledge farm, in Durham; that the value of said farm is about two thousand dollars; thinks its value somewhat increased by the ledge on it; but includes the ledge in his estimate of the value of said farm; that, in his judgment, said farm in the years 1835 and 1836, was worth no more, if so much, as it is now; for within two or three years a new barn and shed were built by Edward Pendexter; that the value of real estate has been very uniform in Durham for ten or fifteen years past.

To the 2d interrogatory he says, that he did not sell said farm, and only knows from common report of the several matters inquired about in said interrogatory.

To the 3d interrogatory he answers, that his knowledge of quarries is derived from the fact of his having, for the last thirty years, devoted more or less of his time every year to quarrying rocks; and that two years ago he worked the Cleft Ledge, to some extent, by the permission of Edward Pendexter; that the value of said ledge would depend now, as it would ten years ago, on the purchaser of the farm; that one accus-

tomed to the business might, at the leisure seasons of the year, get out a few stones to advantage, but that no company could work it profitably at the present time, nor at any time for ten years past; that said ledge had no value before it was uncovered; that he once offered said Pendexter, two years ago, a hundred dollars for said ledge, and that is all he considers it worth now; that, as the price of rock is now, no company could get enough, by quarrying, to pay the expenses; said ledge is wrought by no one now.

To the 4th interrogatory he says, that he resides about two and a half miles from said farm and ledge, and has so resided his whole life; that said farm possesses no peculiarity that gives it any enhanced value over most farms in Durham.

To the 5th interrogatory he says, that he don't remember how the fact inquired about was; he knows that Edw. Pendexter obtained said farm about twenty years ago, but don't now recollect how.

To the 6th interrogatory he answers, that the buildings on said farm, on the 25th of August, 1836, were an old one-story house, not very good, an old barn and shed, and he thinks a small corn house; thinks the house was worth two or three hundred dollars; the barn and shed were of little value; they have since been torn down, and a new barn and shed erected, within three years, by said Pendexter; a blacksmith's shop and stone shed were erected by the Granite company, on said place, before August, 1836, which might have cost a hundred and thirty dollars.

To the 7th interrogatory he answers, that work has been done in opening a ledge by the Cleft Ledge Granite Company, as he supposes, principally before August 25th, 1836; that there was a considerable amount of work done in and about said ledge, but he cannot state what its value was.

To the 8th interrogatory he answers, that he don't know what amount of rock got out was taken from the premises, nor what became of them; the rocks left on the premises, got out, and on hand, after the company ceased work in the fall of 1836, were subsequently sold at auction, which auction he attended, and, with his brother, bought most of the rocks; that the amount of sales was about $150.

To the 9th interrogatory he says, that he only had a slight acquaintance with George C. Thompson, who acted as the agent of the Cleft Ledge Granite Company; that he never had any dealings with him or said company.

To the 10th interrogatory he answers, that he had not a full knowledge of the credit and standing between the periods mentioned, nor of the value of the stock; in Durham, the stock of said company would not have sold for any thing; never heard of any being sold, or offered for sale, in Durham.

To the 11th interrogatory he answers, that he has no means of knowing the value of the tools and implements used by said company in August, 1836; that they had no carts, trucks, and expensive machinery for moving stone.

To the 12th interrogatory he says, thinks a fair expense of making the road from the ledge to the county road would be seventy-five cents per rod, previous to August 25, 1836; the distance he thinks about twenty-five rods; that said road was made principally from the dirt and gravel and stone removed from off the ledge in opening the same; thinks it could not have been much additional expense to opening the ledge, as the dirt could as easily have been deposited on said road as any where else.

To the 13th interrogatory he says, that there were, he thinks, a few fruit trees near the house, young and of small value, in 1836.

To the 14th he answers, that he knows nothing of the facts inquired of in said interrogatory.

To the 15th interrogatory he says, that said ledge is harder than ledges generally are in Durham, and costs a little more to hammer the rocks, and are no more valuable than rocks from other ledges in town; that there are an abundance of granite ledges in Durham, equally as good, and as easily wrought, and some with equal facilities of transportation, that are not esteemed by farmers as enhancing the value of their farms; and who would be willing to exchange them for the same amount of soil.

To the 16th interrogatory he says, that he considers the arable and mowing land more valuable, by the acre, than the ledges on said farm.

And the said Valentine Mathes, in answer to the defendants' cross interrogatories, testifies and says as follows, to wit:

To defendants' 1st cross interrogatory he answers, that location, quality, facility of transportation, ability to furnish large as well as small blocks, good rift, right combinations of quartz, mica, and feldspar, a near and ready market—all these enter into the estimate of the value of a granite quarry; most of these qualities appertain to Durham granite, except a near and ready market, and for want of this our ledges are of little value.

To the second he answers, that the location of a granite quarry is an important item to be considered in estimating its value.

To the 3d he answers, that there is a great difference in the rift of stone in the same neighborhood; that there is a great choice in stone, on account of the combinations; and some stone wears much brighter than others.

To the 4th he answers, that the only experience he has had in testing granite, is in quarrying and hammering it more or less for thirty years, and in this way he has tested the Cleft Ledge.

To the 5th he answers, that other ledges in Durham have been tested as fully, and wrought to a much greater extent.

To the 6th he says, that the Cleft Ledge is not good rift; the quality is good; thinks there is not much difference in color to the Quincy granite; it may be a little darker.

To the 7th he says, the location of said Cleft Ledge, for working and transportation, is no better than some others in town; does not think the

price of granite abroad, say in Boston and New York, ought to influence the value of a quarry here; thinks a ledge would bring more, well situated, when granite was high than when low.

To the 8th he answers, that he never estimated the value of said ledge in 1835; in his estimate of the farm and ledge, he placed the highest value upon it that it could have been sold for to any body in his neighborhood, for the last ten years.

To the 9th he answers, that he don't know at what prices good granite ledges sold for in 1835 or 1836, or were held at.

To the 10th he answers, that he was never concerned in the purchase of a granite quarry, or in stock in any company; was not knowing to the sale of any ledges in 1835 and 1836, except the Cleft Ledge; has heard of the Blue Hill and Kennebunk ledges, but never knew what they cost.

To the 11th he says, that he never saw Dr. Jackson's report on the Cleft Ledge.

To the 12th he answers, that he testified that he knew nothing of the facts inquired in his answer to the 2d direct interrogatory, except from common report.

To the 13th he answers, that whether said ledge could be wrought profitably or not would depend somewhat on the price of granite, and the kind of stone; thinks that split stone, without hammering, for certain purposes, might be got out, and delivered at Boston from the Cleft Ledge for the price named, and afford a small profit; that he has experience in quarrying on his own account; that it would cost $70 to quarry a hundred tons of granite there, $162 to fit it for market by hammering, and about $4 per ton to get it from the ledge to Boston; these estimates are founded on his own experience.

To the 14th he says, that he has no knowledge of the facts inquired of in the 5th direct, and has so stated.

To the 15th he says, that the facts testified to in his answer to the 6th direct interrogatory, as to the number and kind of buildings on said farm, were within his own knowledge; his estimate of their value was a matter of judgment upon the state of things as they have existed since his recollection; that he don't know what they cost; that he has built similar buildings, and is enabled to form a tolerable judgment of the value of them.

To the 16th he says, that in his answer to the 7th direct interrogatory he testified that work was done in opening said ledge by the Cleft Ledge Granite Company, as he supposed, principally before August 25, 1836; that he did not undertake to say what the value of said work was, nor could he.

To the 17th he says, that he never saw the bills of work done by said company before or after August 25, 1836, nor has he undertaken to say what amount of work was done before or after that period.

To the 18th he says, that he has not undertaken to testify to the cost of the outlays then previous to August 25, 1836.

To the 19th he says, that he has not undertaken to give estimates in

answer to the 8th direct interrogatory; that his knowledge was confined to the rocks got out and left on the premises by the company when they ceased work; that said rocks were not measured, but sold in lots, and that they brought what he has before testified.

To the 20th he says, that he never had any dealings or contracts with said company.

To the 21st he says, that in answer to the 10th direct he disclaimed all knowledge of the credit and standing of said company, between the periods mentioned therein; that his knowledge of the value of said stock was confined to Durham.

To the 22d he says, that he has never attempted to give an estimate of the value of the tools and implements used by said company in August, 1836, nor at any time.

To the 23d he answers, that he has built similar roads, and knows the expense per rod; will not say what he would engage to pay the bills of making said road for, but would engage to build such a road per rod for what he has before stated, to wit, seventy-five cents.

To the 24th he says, that he knew nothing of the facts inquired about in the 14th direct interrogatory.

To the 25th he says, that he did estimate said ledge higher in 1836, after it was opened, than before it was opened, in 1833 or 1834; for then there was no value attached to it; he cannot say, but there might have been a belief that there was more value in said ledge than had been before supposed in 1836; that there was a good deal of talk about it, and thinks it likely it was considered then to be worth more than it is now.

To the 26th he says, that good granite, well situated, and affording facilities for operating, is worth something in this neighborhood now, although there is little or no demand for it; that he would not sell a good granite quarry, well located, as cheap by the acre as pasture or mowing land.

To the 27th he says, that he should not sell the Cleft Ledge as cheap by the acre as other parts of the farm; that he does not attach value to it.

To the 28th he says, that Durham is ten miles distant from Portsmouth; that but little granite is used in Portsmouth; that the facilities for transporting granite from Durham to Portsmouth are good, in gondolas, by water.

To the 29th he says, that he never saw Jonathan P. Bishop to his knowledge, and never had any communication with him, or any one else, in relation to what he has here testified.

VALENTINE MATHES.

All the foregoing answers were reduced to writing by me, and were subscribed and sworn to by said Valentine Mathes, before me.

J. A. RICHARDSON,
Commissioner and jus. peace.

June 6, 1845. Opened and filed.

Circuit court of the United States, first circuit, holden at Boston, for the district of Massachusetts.

SAMUEL WARNER, plaintiff,
vs.
ADAMS DANIELS et al., def'ts.
} In equity.

Interrogatories to be propounded for the plaintiff to the following witnesses, viz., Henry N. West, of Old Town, and Jefferson Chamberlain, of Bangor, both in the county of Penobscot, and State of Maine.

Interrogatory 1st. To said West, and all the other witnesses What is your age; what your occupation; where is your place of residence; how long have you resided there?

Interrogatory 2d. To said West. Have you or not ever had any acquaintance with Adams Daniels, one of the defendants, or Joseph J. Fales, the other defendant? If yea, where and how was such acquaintance formed; at what time; to what extent had you ever such acquaintance; was it a casual introduction merely, or such as grew out of one or more important business transaction? If the latter, you will please state fully and particularly what such business transaction was; how it commenced between you and either of the defendants; who introduced the business; how the same progressed through its different stages, until a bargain, sale, purchase, or any other negotiation between you and either of the defendants was consummated. Will you state fully and particularly each and every representation which either said Daniels or Fales made to you concerning any kind of article of property which they or either of them put to you in exchange for your property; if there was any such exchange of property, or any representation ever made by them to you?

Objected to as irrelevant.

Interrogatory 2d. To said West. Have you or not ever deeded to said Daniels, or said Fales, any real estate, and received for the same any note of any person, or company, or corporation, or any stock of any kind in any corporation? If yea, what note; what stock? Describe either particularly, and every representation which was made to you, by either of said defendants, to induce you to receive the same as the consideration for your deed.

Objected to as irrelevant.

Interrogatory 3d. To said West. If you ever received of either of said defendants any note, has or not said note been paid? If yea, when and how paid, and by whom? If not paid, why have you not collected the same?

Ditto.

Interrogatory 4th. To said West. If you ever heard said Daniels or Fales say anything about the value of a note, or the value of the stock of a corporation called the "Cleft Ledge Granite Company," what was said by either of them; when, where, and on what occasion was it said?

Interrogatory 5th. To said West. If your deed to said Daniels or Fales was ever cancelled or annulled, or said real estate, by you deeded to either of them, was ever reconveyed to you, how was such reconveyance induced or brought about? Did you repurchase the farm? State particularly and fully what was the reason of such reconveyance, if any?

Irrelevant.

Interrogatory 6th. To said West. Have you or not ever heard said Daniels or Fales speak of the stock of said Cleft Ledge Granite Company being equal to and as valuable as Boston or any other bank stock, or say that the same would pay any, and, if any, what dividend to the stockholders? State particularly all either ever said in your hearing, upon the value of said stock.

Irrelevant.

Interrogatory 7th. To said West. Have you or not ever heard said Daniels or Fales make any statement as to what property said company owned? If so, what did they, or either of them, say? Did they or not say any thing about said company owning a valuable quarry, a brig, or other vessel; having large and valuable contracts for furnishing stone, or rock, for the Government; or about the amount of capital said company had paid in? State particularly and fully all that was said by either, tending to show said company to be in good standing or otherwise.

Irrelevant.

Interrogatory 8th. To said Chamberlain. Will you examine the records of the deeds for the county of Penobscot, and transcribe therefrom a true copy of every deed of real estate recorded from Adams Daniels to Joseph J. Fales, from the first day of January, A. D. 1835, to the first January, A. D. 1837, and state whether the same is a true copy, and annex the same as an answer to this interrogatory? Will you also transcribe from said records a true copy, and attest the same, of a deed dated the 11th of August, 1835, from Stephen Cummings to said Daniels, and state whether there is any deed upon your records from Kiah B. Sewell, to said Daniels, from January 1st, 1835, to January 1st, 1837? If so, annex a copy of the same.

JONA. P. BISHOP, *Plaintiff's Solicitor.*

Cross interrogatories to West, the defendants first objecting to all of the direct interrogatories, except the first, as irrelevant.

1. How long before the deed was given to Daniels did you first negotiate with him about the matter? When did it commence? Was it more than a month before?

2. Did you ever have any negotiation with J. J. Fales, for the Cleft Ledge Granite stock or notes?

3. Was you ever present at any interview between Adams Daniels and Samuel Warner; or J. J. Fales and Samuel Warner?

4. Do you know Samuel Warner, or did you ever see him?

5. Do you know, of your own knowledge, any thing about a trade between said Daniels and said Warner, made Nov. 28, 1836? Have

you the slightest knowledge of the terms of this contract, or what was said by either of them, to induce the other to trade?

6. Did you ever buy Cleft Ledge Granite stock of Adams Daniels or Joseph J. Fales; or negotiate with said Daniels for any of said Cleft Ledge Granite stock; or with said Fales?

7. What did Daniels let you have for your house? Was it not the Cleft Ledge Granite Company's note for about $2,400, and a quantity of logs delivered in the boom?

8. What was the date of the company's note, and how long had it to run? What estimate did you put upon the house you let Daniels have, at the time of the trade; did you not value it at about $3,500?

9. When this trade was made with Daniels, was not said house rented at $350 per year?

10. Very soon after that trade, did not serious commercial embarrassment ensue, which affected the price of property in Oldtown? Did not property fall more than one-half within a year or two?

11. What would be a fair rent for said house now? What would that house bring at auction now? What would you give for it now?

12. What would that house have brought when said company's note became due? Did you not try to get $550 offered for said house two or three years ago?

13. Has not Adams Daniels, since your said trade with him, offered to reconvey said house to you, if you would pay him for the said logs, and return him said company's note?

14. Have you ever received any letters from any one about this suit? If you have, please annex the same, or a copy thereof, to this deposition.

15. If you have attempted to give any representations made by Adams Daniels or Joseph J. Fales, to you, about the condition of the C. L. G. Co., please to fix definitely when these conversations took place, where they took place, who was present, what induced the conversation, what caused you to remember the conversation, and how long since you have before called it to mind.

16. Where you have attempted to give what Daniels or Fales said about said company, have you attempted to do any thing more than give what you conceived to be the import of their remarks? Please now to give their exact words as made use of by them; if you cannot recollect their precise words made use of by them, please to say so.

F. W. SAWYER,
Solicitor for the defendants.

It is agreed that the foregoing eight direct and sixteen cross interrogatories shall be considered the oral interrogatories, to be propounded to the above named witnesses, and that they shall be propounded by the commissioner, and the answers taken down and sealed up by him, without the presence of the parties or their agents.

F. W. SAWYER,
Attorney for Daniels et al.
JONATHAN P. BISHOP,
Plaintiff's solicitor.

Henry N. West, a witness produced, sworn, and examined on behalf of the plaintiff, in the title of these interrogatories mentioned, in answer thereto, deposes as follows :

To the 1st interrogatory. I am thirty-five years old ; engaged in lumbering ; Oldtown, in the county of Penobscot, is my place of residence, and I have resided there about eleven years.

To the 2d. I have had an acquaintance with both Daniels and Fales. It was formed at Oldtown. My first acquaintance with Daniels grew out of a sale of real estate, at Oldtown, to him. I casually saw Fales at Oldtown, but my acquaintance with him was formed at Boston. I was seeking information about the goodness of a note signed by Odiorne and others, for the Cleft Ledge Granite Company. I first became acquainted with Daniels in 1839 or 1840, I think ; at any rate, it was the same year that he made the trade with Warren. I became acquainted with Fales about a year afterwards ; my acquaintance with them both grew out of business transactions. In 1839 or 1840, Daniels came to me at Oldtown, and said he wanted to buy of me a dwelling house, or double tenement there, and said he had a quantity of logs up river that would make one hundred thousand feet board measure, and a note of the Cleft Ledge Granite Company which he would give me for it. He said the note was perfectly good ; that it could be discounted for twelve per cent., and that he would at any time sell me goods in Boston for it, as well as I could buy them at six months credit. Upon these representations I traded with him, and took the logs and note. I got about sixty thousand feet of boards out of the logs, and that was all I could find ; and the note turned out to be good for nothing.

After I had taken the note, I called on Fales, at Boston, to know if it was worth any thing ; and he said it was good, and represented it as a note that would be paid.

I made a deed of the estate, or caused it to be made, to Daniels, in exchange for the note and logs.

To the 3d. ("second"?) I did deed Daniels, as I have already stated. I received nothing but a note of the Cleft Ledge Granite Company, and logs, for that deed. I never deeded any estate to Fales. The note was for twenty-seven hundred dollars, or thereabouts, and was on interest annually. Don't recollect its tenor or date more particularly. I have already stated the representations made by both said defendants as I recollect them.

To interrogatory third. Said note has never been paid. I have called on the treasurer of said company for principal and interest, as they fell due, and could get neither.

To interrogatory fourth. I have stated their representations as to the note. Daniels said the stock of said company was worth a hundred cents on the dollar—was perfectly good ; and I sold my property, in consequence, as low as though I had had the cash, or any good property for it. These representations were made at Oldtown, at the time of

the sale by Daniels, and Fales also spoke well of the note, six months afterwards, in Boston, and said I should get my pay for the note.

To the fifth. Said real estate was never reconveyed to me by any one.

To the sixth. Daniels said the stock was as good as any other stock in the country, and told of the large contracts they were about making in Portsmouth and elsewhere for granite. They had a large plan of the quarry, and map to shew the facilities for getting to Portsmouth.

To the seventh. Daniels told me how much property the company owned, and of what it consisted; said they had built a blacksmith's shop, and a large building for hammering stone, had got the quarry open, and were going on with operations; that they had a contract with the Government to furnish stone; that the company had paid in a good deal, and I think eight to ten thousand dollars, and would pay in the whole amount of their capital. I don't recollect as he said any thing about the company's owning a vessel, or vessels, of any kind. I don't recollect that Fales made any representations more than I have stated.

Cross examined.

To 1st cross interrogatory. It was not long before the deed was given that negotiations were going on a few weeks. I cannot tell when it commenced.

To 2d cross interrogatory. I believe I never did have any negotiation with Fales on the subject of the Cleft Ledge Granite stock or notes.

To the third cross interrogatory. I never was present at any such interview. I never saw Saml. Warner, to my knowledge.

To the fourth cross interrogatory. No.

To the fifth cross interrogatory. I know nothing of the matter.

To the sixth cross interrogatory. No. I never bought any Cleft Ledge Granite stock. All I ever owned was their note. I never negotiated for any stock with either Daniels or Fales.

To the 7th cross interrogatory. He let me have a note for about twenty-seven hundred dollars, I think, and logs, as before testified to. Part of the logs only were delivered in the boom.

To the 8th cross interrogatory. I do not remember the date of said note. It had one or two years to run. I estimated the house at thirty-three hundred dollars, I think; possibly, thirty-five hundred dollars.

To the 9th cross interrogatory. It has rented for about that sum. I cannot state exactly.

To the 10th cross interrogatory. Yes. Business affairs became embarrassed soon after, and property fell, but not one half in value, within a year or two after.

To the 11th cross interrogatory. A hundred and fifty dollars would be a fair rent for said house at the present time.

It would bring in the neighborhood of a thousand dollars at auction now. I have no wish to buy.

To the 12th cross interrogatory. I cannot say what it would have

brought when the company note became due. I did not, to my knowledge, try to get five hundred and fifty dollars offered for it two or three years ago.

To the 13th cross interrogatory. Adams Daniels has not, to my recollection, made me any such offer. We had some talk, but not to that effect.

To the 14th cross interrogatory. I never have received any letters from any one about this suit.

To the 15th cross interrogatory. My conversations with Daniels were at Old Town, in 1839 or '40. He then made said representations. Col. Wm. Smith was present, and heard Daniels speak of the note after I had taken it. The inducement was to make me trade with him. I remember the conversation because I did not get my pay. It is a year, I should think, since I thought a great deal about it. It has always been on my mind more or less.

To the 16th cross interrogatory. I have given no more than the import of their remarks. I meant to state what I understood, and remembered that they said. I cannot give their exact words; I mean only to state the substance of what they said.

H. N. WEST.

U. S. DISTRICT OF MAINE, *ss:*

On the twenty ninth day of March, A. D. 1845, the aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition aforesaid by him subscribed.

Before me, FRED. HOBBS,
Commissioner in U. S. circuit court for Maine district.

Jefferson Chamberlain, a witness produced, sworn, and examined on behalf of the plaintiff, in the title of these interrogatories mentioned, in answer thereto, deposes as follows:

To the first interrogatory. I am forty-one years old; I am register of deeds for the county of Penobscot; I reside in Bangor, and have for the last three years and over.

To the second interrogatory. I have examined the records of deeds for the county of Penobscot, as requested in this interrogatory; I have transcribed theretrom every deed of real estate recorded from Adams Daniels to Joseph J. Fales, from the first day of January, 1835, to the first day of January, 1837, and found but one deed from Adams Daniels to Joseph J. Fales recorded; said deed is dated October 8, 1836, and a copy there*for*, duly certified by me, is hereto annexed, marked A.

I have also transcribed from the records, and attested the same, a true copy of a deed, from Stephen Cummings to said Daniels, dated Aug. 11, 1835; I find no deed from said Adams Daniels to Kiah B. Sewall recorded in this office between said first day of January, 1835, and first day of January, 1837.

The deed, Cummings to Daniels, is hereto annexed, marked B.

JEFFERSON CHAMBERLAIN.

UNITED STATES, MAINE DISTRICT, *ss:*

On this thirty-first day of March, A. D. 1845, the aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition aforesaid, by him subscribed.

Before me, FRED. HOBBS,
Commissioner in circuit court of the U. S., for Maine district.

Know all men by these presents, that I, Adams Daniels, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, in consideration of sixteen thousand nine hundred and seventy-seven dollars, paid to me by Joseph J. Fales, of Boston, in the county of Suffolk, and commonwealth aforesaid, physician, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey, unto the said Joseph J. Fales, three undivided sixteenth parts of the northerly half of the townships numbered two, in the third range of townships, situated in the county of Penobscot, and State of Maine, west of the monument at the source of the river St. Croix, and south of a line running due west from the monument, called the Monument line; being a part of the same land conveyed to me by deed of Stephen Cummings, dated the eleventh day of August, eighteen hundred and thirty-five, and entered with the records for deeds in Penobscot county, book 72, page 37; meaning to convey the same title to the premises that was conveyed to me by said Cummings.

To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Fales, his heirs, and assigns, to his and their use and behoof for ever. And I, the said Daniels, for myself and my heirs, executors, and administrators, do hereby covenant with the said Fales, his heirs, and assigns, that I am lawfully seized in fee of the afore granted premises; that they are free from all encumbrances; that I have a good right to sell and convey the same to the said Joseph J. Fales, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Fales, his heirs, and assigns, for ever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Adams Daniels, have hereunto set my hand and seal, this sixth day of October, in the year of our Lord eighteen hundred and thirty-six.

ADAMS DANIELS. [L. S.]

Signed, sealed, and delivered, in presence of—
HORACE MANN.

FRED. HOBBS, *Commis'r.*

(A.)

SUFFOLK, *ss:*

BOSTON, *Oct. 8th, A. D.* 1836.

Then personally appeared the above named Adams Daniels, and acknowledged the foregoing instrument to be his free act and deed; before me,

HORACE MANN,
Justice of the peace.

Received December 20th, 1836; entered and examined by
STEVENS DAVIS, *Register*.

STATE OF MAINE, *Penobscott*, *ss:*

REGISTRY OF DEEDS, *Bangor*, *Feb'ry* 17, 1845.

The foregoing is a copy from the records of deeds for said county, vol. 85, pages 121 and 122; examined and compared by
JEFFERSON CHAMBERLAIN,
Register.

Fees, 2; copies, 1 00; examining records, 1 00.

Know all men by these presents, that I, Stephen Cummings, of Roxbury, in the county of Norfolk, and Commonwealth of Massachusetts, do give, in consideration of twenty-two thousand and eighty dollars paid to me by Adams Daniels, of Boston, in the county of Suffolk, and commonwealth aforesaid, merchant, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey, unto the said Adams Daniels, one undivided fourth part of the northerly half of the township numbered two, in the third range of townships, situated in the county of Penobscot, and State of Maine, west of the monument at the source of the river St. Croix, and south of a line running due west from the monument, called the Monument line, being the same half township which was this day conveyed to me by George W. Coffin, the land agent of the Commonwealth of Massachusetts. To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Adams Daniels, his heirs, and assigns, to his and their use and behoof, for ever. And I, the said Stephen Cummings, for myself and my heirs, executors, and administrators, do covenant with the said Daniels, his heirs, and assigns, that I am lawfully seized in fee of the afore granted premises; that they are free from all encumbrances; that I have good right to sell and convey the same to the said Adams Daniels, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Daniels, his heirs, and assigns, for ever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Stephen Cummings, have hereunto set my hand and seal, this eleventh day of August, in the year of our Lord eighteen hundred and thirty-five.

STEPHEN CUMMINGS. [L. S.]

Executed and delivered in presence of us—
K. B. SEWALL,
A. PEABODY.

FRED. HOBBS, *Commis'r*.

(B.)

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, *August* 12, *A. D.* 1835.

Then personally appeared the above named Stephen Cummings,

and acknowledged the above instrument to be his free act and deed; before me, AUGUSTUS PEABODY,
Justice of the peace.

Received Nov. 6, 1837; entered and examined by
STEVENS DAVIS, *Register.*

STATE OF MAINE, *Penobscott, ss:*

REGISTRY OF DEEDS, *Bangor, Feb.* 17, 1845.

The foregoing is a copy from the records of deeds for said county, vol. 72, pages 37 and 38; examined and compared by
JEFFERSON CHAMBERLAIN, *Register.*

UNITED STATES, *District of Maine, ss:*

SAMUEL WARNER, in equity,
vs.
ADAMS DANIELS et al.

The execution of this commission appears in the deposition of Henry West, taken March 29, 1845; and in the deposition of Jefferson Chamberlain, taken March 31, 1845; and in two papers thereto annexed, marked A and B, identified by my name as commissioner.

The said eight direct and sixteen cross interrogatories, only, were propounded to said witnesses, as therein arranged; and their answers were taken down by me in the presence of each witness, and apart from all others, as by the agreement of the parties was provided.

Witness my hand, this thirty-first day of March, A. D. 1845.
FRED. HOBBS,
Com. in U. S. circuit court for Maine dist.

Fees.

H. N. West,	travel and attendance - - - -		$1 70
J. Chamberlain,	" " - - -	58	
	copies, &c. - - - -	2 00	2 58
Commissioner -	- - - - - -		8 00
			$12 28

June 6th, 1845. Opened and filed.

I, George C. Thompson, of Chicago, in the State of Illinois, mechanic, of lawful age to testify, on oath depose and say, in answer to interrogatories to him proposed, by F. [W.] Sawyer, esquire, counsel for Adams Daniels and al., defendants.

1. What is your age and occupation, where do you reside, and how long have you resided there?

Answer. I am thirty-eight years old, within a few days; I am a machinist; I reside in Chicago, and have resided there a year and a half.

2. Where did you reside in 1836, and the few years previous?

Answer. For most of 1836 I resided in Durham, New Hampshire; in 1835 in Boston.

3. Were you or not interested in the Cleft Ledge Granite Company? If yea, state what led to your first connection with said quarry, and who were your associates?

Answer. I was interested in said quarry. In 1834, '5, and perhaps in the spring of 1836, I was in business in Boston, on Central wharf, with my brother, James M. Thompson; a Mr. Pendexter, with whom I was previously acquainted, came to Boston, and brought a description of this stone quarry, and wished us to sell it for him; after more inquiry into it, my brother, Newell A. Thompson, of Boston, proposed to go and examine the quarry; he left here, as he said, on that purpose, and on his return gave a favorable account of it; and then said Newell A. Thompson, James M., myself, and a Dr. Fales, purchased the quarry for a sum, near as I think, $4,000.

4. At what time was the purchase made? Had or not the quarry been opened and tested, so as to determine the quality and value of the granite; what was the situation of the quarry in that respect?

Answer. The purchase was made, I think, in the fall of 1835; when we purchased there had not been any operation on the quarry by which the quality of the granite could be tested.

5. How soon after the purchase did you visit the quarry, and what was its situation in that respect then?

Answer. I think I visited the quarry the next spring; but I have no way of being at all particular about dates, and may make a mistake of a year. It had then been opened, and was in a situation in which it could be well examined; the rubbish had been removed, and considerable earth had been taken away, so that it was exposed for a quarter of a mile in length, and to a considerable depth.

6. At whose expense had this been done?

Answer. At the expense of the proprietors named before, my brothers, and Dr. Fales.

7. State generally and fully what you and your associates did after the purchase of said quarry to test its quality, and prepare the same for working?

Answer. I went there after the ledge had been fully opened, and took with me money to operate with. I hired men, built a road from the ledge to a river, cutting through a hill a hundred rods or more, and twenty to thirty feet deep, and wide as a common road, and bought a strip for it four rods wide, and carried the road to a river, and there we built a wharf large enough for a schooner to lie at. I built a blacksmith's shop, with two fires, and furnished it with iron and steel enough to make tools for twenty men. I worked the ledge, and got out stone enough to know it could be worked to advantage, and took some contracts for stone at Portsmouth, and elsewhere. I give the admeasurements as my estimation, and not as precisely accurate.

8. What were the facilities for getting the granite to market?

Answer. When the road was complete, as it was descending, one yoke of cattle could haul two tons half a mile, to the river, and vessels could

lie at the wharf; i. e. the packet schooners could, and take the stone. I believe there was six or seven feet of water at the wharf.

9. After you had done this, and before the company was formed, what degree of encouragement did you and your associates feel as to the value of the quarry, and the chance of profit from working it?

Answer. While I was at the ledge, Dr. Jackson, by the request of the proprietors, came to the ledge to make a geological survey of it. He examined the quarry, and reported in favor of it; that it was a good quarry, and could be worked to advantage. And he gave me a written report. (Mr. Brown objects to statements of what Dr. Jackson said.) After we had examined the quarry, and Dr. Jackson's report, [we felt a great degree of encouragement.] Mr. Brown objects to all in brackets.

10. Were or were not granite ledges in great request in 1836? What was the price of granite in that year? What success was then attending the operations of granite companies then quarrying stone? Was it not then considered a profitable business?

Answer. Granite ledges, I know, were in great request in 1836; the price I don't recollect. I have no personal knowledge of other companies, and our own had not been in operation enough to ascertain; [granite quarries were considered a then profitable business.] Mr. Brown objects to all in brackets.

11. What prices were good quarries, well located, then commanding; what was given for the Kennebunk quarry; what for the Blue Hill; what for other quarries within your own knowledge?

Answer. I am unable to say. I had no interest in them, and I have no personal knowledge about them.

12. State what beside the quarry you took with your purchase for about $4,000, you speak of.

Answer. A well cultivated farm, a good house, and a large barn. The farm was well supplied with fruit trees. I don't recollect the number of acres, but I should think from 20 to 30; it may have been less, and I have forgotten whether it included another lot adjoining it.

13. Did or not you and your associate find your capital insufficient to work the quarry to advantage, and was or not this the cause of selling out to the company?

Answer. We had not sufficient capital to carry it on, and consequently sold it to a company who could; that we hadn't capital was a cause for selling out, but probably it wouldn't be the only cause, as we could make something by it.

13. Give the history of the formation of the Cleft Ledge Granite Company. State how the company was formed; what was given to you and your associates for the ledge; whether or not that was a fair price, as granite ledges were then held and sold?

Answer. I was at Durham, and went from there to Concord to get the charter, the original corporators lived here, and whether I was here or at Durham when the company was formed I can't say. I can't tell who were the company; but I heard the act of incorporation mention other names than the original proprietors; there were a great many

persons at the time wanted to be interested; what was given me and my associates for the ledge I can't say. I have been trying to fix it all day. I know it was a pretty large sum, but I don't know the amount. [We considered the amount received at the time as proportionate for what other ledges were selling.] I don't know the amount.

Mr. Brown objects to all in brackets.

14. Did you or not act as clerk of said company; and, if yea, when, and how long? Was you or not duly qualified, and when, and where. and how? Annex the certificate of your qualification, if you have any, and state what was your salary.

Answer. I acted as clerk of the company during the summer and fall of 1836. I was duly qualified at Durham immediately after the incorporation; I don't know who acted as justice of the peace, but some justice of the peace administered an oath to me. I have no certificate, but think there is one among the papers of the company; and all the papers of the company were kept together, and delivered by me, I think, to Mr. Baker. My salary is stated in the paper marked A, which is an original paper.

15. State what operations and improvements were made by the said company after they purchased, and beyond December, A. D. 1836.

Answer. There was a large amount of stone quarried; I could not tell the amount. The quarry was opened to a very considerable depth for the whole length cleared. Col. Bates was employed by the company to take charge of the quarrying part; a large shop was built for the men to work under in hammering the stone; that was the only building put up by the company.

16. What contracts for stone did the company obtain? How many hands did they employ at any one time? Was or not any stone shipped from the quarry before December, 1836?

Answer. The company obtained one contract for furnishing stone for the town-house at Portsmouth; one for the navy yard at Portsmouth for a large timber shed—this was a large contract for long posts. These were the only principal contracts that were closed; there were a number of small ones for the neighborhood. I should think the company employed about twenty hands, but I don't recollect now. Some stone was shipped to Portsmouth by the company before December, 1835.

17. Were there or not any other contracts under negotiation in the fall of 1836, and to what amount, and what? What, if any, was the prospect of obtaining them?

Answer. I do not think of any other contracts under negotiation at that time. The large contract for the navy yard was closed about the close of the business for that year. [There may have been other contracts made by Col. Bates that I don't know of; he was the superintendent, and authorized to make any contracts.]

Mr. Brown objects to all in brackets.

18. At what time did you close the business at the quarry in 1836? What were the prospects of the company for a profitable business the

coming year? State what were your own feelings at that time in that respect.

Answer. We did not close the business till after snow came, but I don't recollect the time. We worked on it till it got too cold to work on it any longer. [The prospects of the company were good, as I thought.] I thought I had made a profitable contract with the Navy Yard, and was calculating to go on with it in the spring to advantage.

Mr. Brown objects to all in brackets.

19. How did the quarry and the granite answer your expectations? And what, if any advantage, did it possess over the Quincy quarry, as to the hiring of men?

Answer. It was as good as we expected to find it as far as we worked down into it. The advantage would be that we could hire men much cheaper than they could be at Quincy. We could hire men at twelve dollars per month, who would cost twenty at Quincy; and board was cheaper in New Hampshire than at Quincy.

20. How was the business of the company conducted, faithfully or otherwise? What was the character and qualification of the agent? How did he discharge his duties?

Mr. Brown objects to the question.

Answer. So far as I know and had any thing to do with it, it was conducted faithfully. Col. Bates' character as an operator on granite was as good as any man's in the country, and he was of good character as a man—temperate and faithful, and, so far as I know, performed his duties well; and I was there all the time he was.

Mr. Brown objects to the answer.

21. Is it usual to work granite quarries in the winter, or to suspend operations?

Answer. Always to suspend in the winter.

Mr. Brown objected to the question as to usage.

22. What if any thing happened in the spring to induce the company to suspend operations? Give the reasons as far as you know them.

Answer. There was a general stagnation of business and of money affairs, and therefore they stopped.

23. What was the state of the market for granite in the spring of 1837, in comparison with the fall of 1836?

Answer. There was no sale for granite in the spring of 1837, compared with 1836; I could make no contracts; I tried.

24. Do you or not know Adams Daniels, and where have you seen him? What is the nature of your acquaintance with him?

Answer. While I was operating in Durham, I remember occasionally seeing him at Dr. Fales's, in Boston; he was a partner with Dr. Fales's brother, and I believe boarded in the same house with Dr. Fales.

25. While you were clerk of said company were you or not often called upon for information about the affairs of said company?

Answer. Very often indeed, sir; always when in Boston, and frequently there.

26. Was you or not well acquainted with all the leading and material facts connected with the institution of the company, its organization, ability, liability, and operations.

Answer. I was at that time.

27. When you were consulted on these points, or any of them, how did you answer such inquiries; freely, and frankly, and fully, or how otherwise?

Mr. Brown objects to the question.

Answer. I always gave all the information in my power to any one asking me.

28. Could you or not have informed any inquirer whether or not said company owned a brig or other vessels?

Answer. I could most certainly, if I had been asked the question.

29. After you left Durham in the fall of 1836, where did you reside during the remainder of the fall and winter?

Answer. Most of the time in Newmarket, in New Hampshire, where my family was; I was frequently here.

30. Do you or not recollect being called upon in November, 1836, by Samuel Warner, who made inquiries about the Cleft Ledge Granite Company?

Answer. I've no recollection of Samuel Warner; I am not able to recollect individuals who called at that time.

31. Were you or not knowing to the sale of any of the stock of said company during 1836? If yea, what price did it bring? Was or was not any sold less than par?

Answer. I was not personally knowing to the sale of any.

32. What were the general character and standing of the president, directors, and stockholders of said company, as men of business and of means, in 1836?

Mr. Brown objects to the question.

Answer. Their character as men, and as business men, stood as well as that of any other men in the city, at that time.

33. How did the officers of the company attend to the business of operating? Did they or not provide the requisite means to carry on operations?

Answer. So far as I was concerned they did, and that is as far as I know about it; they always furnished me means to pay off all debts I contracted.

34. So far as you know, what appeared to be the feeling of the members of the company about keeping their stock in said company, in 1836? Were they anxious to sell out, or how otherwise?

Mr. Brown objects to the question.

Answer. I do not now recollect about their being over anxious to sell out in 1836.

Cross interrogatories by Brown, esquire, counsel for Samuel Warner, plaintiff.

1. Have you received any letter, or letters, or other communications, from the defendant in this suit, or any other persons, in relation to this

suit, or any of the matters inquired about in this commission? If yea, annex the same or copies.

Answer. I received a letter from Dr. Fales about the time I received the package of interrogatories; I cannot annex it or a copy, as it is in Chicago, if preserved; after private and domestic matters, he said, at the latter part of it, that a package of interrogatories had been sent out to me; that he had been accused of fraud, and if I told the truth, and all I knew about the matter, he knew nothing could be made out against him.

2. Did that letter inclose interrogatories and cross interrogatories, which were prepared, in this case, to be forwarded to you at Chicago; and were said interrogatories substantially the same as have been proposed to you?

Answer. The package of interrogatories was sealed, and I never saw them.

3. Have you never seen said old interrogatory?

Answer. Never, sir.

4. Have you had interviews with the parties, and when, and where, and how often, in relation to this case?

Answer. I had no interview with any party, except that I met Dr. Fales at Mr. Sawyer's office, just before coming in here, and I may have seen him ten minutes; nor have I spoken to any one on the subject except Mr. Sawyer, whom I have seen three times, and we never talked over the matters of the case.

5. When did Mr. Bates enter, and how long, and at what salary; did he continue in the employment of the company; and what were his special duties therein?

Answer. He came there, I think, in August, 1836, and stayed till the stopping of business; his salary I don't know; his duties were the general superintendence of getting out granite and making contracts; he was the general superintendent.

6. What were your duties as clerk?

Answer. My duties were to keep the accounts of men, and paid the bills, and attended to the financial matters at Durham; my appointment was assistant superintendent, as well as clerk.

7. If contracts for stone had been made by the company, would it or not have been your duty to make a record of it, or some memorandum, in a book?

Answer. I had no book of the kind; made no such record, that I recollect; the contracts were generally in writing.

8. If contracts for stone had been made would [you] or not have been likely to know of them?

Answer. I think I should, unless made in the winter, after the company ceased operating.

9. You have said, in answer to 16th direct interrogatory, there were a number of small contracts for stone for the neighborhood, what contracts were they; with whom made; for what purpose; and for constucting what buildings was the stone wanted in said contracts?

Answer. I don't recollect particularly who they were for; they were small, for steps, underpining, &c., of houses erecting in the neighborhood.

10. What salary had you for acting as clerk? State where you resided during all said period you acted as clerk, and whether you resided or did business in any, and what, other place, and what other business during any of said time; and how, and by whom, your salary was paid, and how long you engaged for.

Answer. My salary is stated in the paper referred to, and I think was $700; I resided at Durham all the time I acted as clerk, and did no other business; no time was fixed for the engagement; I think I resided at Durham some four or five months; the salary was drawn from funds in my hand, put partly by the treasurer and partly by other individuals.

11. With what persons or committee (and if committee what were their names,) was the contract for the town hall, at Portsmouth, made?

Answer. The town clerk of the town of Portsmouth, I think, was the man; I don't recollect his name.

12. For what or about what amount of stone, and at what prices, was it made; and for what part or parts of said town hall were those stones to be used; for the foundation only, or the whole building; and was the whole building to be of stone?

Answer. I don't recollect the amount or prices. The stone was for the lower part of the town hall. I think the building was to be brick or wood.

13. Did said company ever receive any payment, and if any, how much, from the town of Portsmouth, or any other person, for said stone?

Answer. They received all the stone came to. I received the money. I don't recollect who of the town officers paid me. The contract was completed and fulfilled.

14. With whom was the navy yard contract made, and was it ever carried wholly or in part into effect; and did the said company ever receive any payment, and how much, and of whom, on the said contract?

Answer. I left in the spring of 1837, and know nothing of the matters inquired of; for I made the contract, but don't recollect who with, and I know nothing of the company after I left. In the spring of 1837 business was pretty much at a stand. The company had concluded not to do much. I can't say they had concluded to do nothing, for there were a good many tools and things that had to be looked after; and I gave up my office and went west.

15. Did said C. L. G. Company ever receive any payment from any person except the town of Portsmouth, and how much, and of whom, and in what article, whether money or otherwise, for stone from said quarry?

Answer. There were small jobs round the neighborhood, paid in cash; there may have been some in barter trade; but I don't recollect; the amount I can't say; the books shew the transactions.

16. How much property over and above what you owed had you

when you became interested in said company, and what did said property consist in? State specifically.

Answer. I have no means of knowing what I was worth at that time over my debts; probably not much; I can't say whether five hundred dollars or a thousand.

17. Did you relinquish your business on central wharf for the purpose of becoming clerk of that company?

Answer. I should think not; not specially for that. I became clerk because I was out of business. My brother and I had lost heavily by shipments to the West Indies, and had given up the store in 1836.

18. What amount of property over and above their debts, at the time you became interested in said quarry, had James M. Thompson, Newell A. Thompson, and Dr. Fales, and what did the property of each consist in?

Answer. I know nothing of their circumstances, except that so far as my brother James's affairs were in the store, they were badly embarrassed. I heard nothing of Newell's or Dr. Fales's property. I believe James was as badly embarrassed as myself.

19. Had N. A. Thompson, or Dr. Fales, or either of them, at the time you purchased, any visible property to your knowledge; and if so, in what did it consist?

Answer. They had handsome furniture and my brother had a horse; and I know only what they told me. I only can tell of any man's property except what they tell me.

The witness said that his brother told him he owned real estate, two horses in Boston; and this the commissioner noted to be inadmissible, and it is now noted at Mr. Sawyer's request.

20. What was Newell A. Thompson's business at that time?

Answer. He was in the employment of Francis J. Oliver, in State street, agent of an English banking house. My brother did the writing and out door matters. His business I have no personal knowledge of.

21. Was your brother a clerk, or in what capacity did he act?

Answer. Of my own knowledge I don't know.

22. How many and which of said original purchasers have since said purchase, and when, failed in business; and how many and which have availed themselves of the benefit of the late U. S. bankrupt act?

Answer. I know I have failed, and have taken the benefit of the bankrupt act; of the others I have no personal knowledge.

23. How were the workmen who were employed by the company paid?

Answer. I paid them in cash at the quarry, as I think. I may occasionally given an order on a store, which was the same as cash. All the debts contracted by me for the men were paid in cash.

24. Are you sure that they were ever all paid?

Answer. As far as I know all the debts contracted for labor at the quarry I paid before I left.

25. Was any part of what was paid, paid in certificates of stock of said company?

Answer. No, sir, I think not. I don't know that certificates were paid for any thing.

26. Was not such payment made to John Sawin and others?

Answer. No such man ever worked at the quarry as John Sawin, to my knowledge.

27. Did said company board the men they employed; and if so, where, and with whom?

Answer. Those that had n't families were boarded round. Col. Bates, and I think some of the men, boarded with Mr. Emerson, the house nearest the ledge; those that had families boarded at home.

28. Do you or not know that a large part of said board has never been paid?

Answer. I do not know so, sir. As far as I remember the bills for board were all paid.

29. At what time did you first go to the ledge? How much had been done to it before Dr. Jackson examined it?

Answer. I am not sure whether I went there in the fall of 1835 or spring of 1836. The brush had been cleared and the earth had been removed, so that the ledge was bare for a quarter of a mile, and the road and wharf built before Dr. Jackson went there.

30. When did that ledge acquire the name of the Clifton Ledge Granite Company, and why was it so called? Was it not previously called the 'Leather's Farm?'

Answer. Pendexter, when he came to Boston, so called it, because it laid in ledges or layers.

31. How long after your purchase was the examination made by Dr. Jackson?

Answer. I can't say. Dr. J. was there in the summer of 1836, while I was operating.

32. Had you then begun to have doubts about the quality of the stone?

Answer. No, sir; it was the height of the fever.

33. Why was Dr. Jackson employed to examine the ledge?

Answer. It was fashionable at the time. Dr. Jackson had examined all the quarries. His report in favor of it would be advantageous, and enable us to make contracts.

34. What is the present value of said purchase according to what [you] know and recollect?

Answer. I have no opinion. I don't know what its condition is, nor what is doing there. I have not heard of it or known of it since I left there.

35. How was the original purchase money paid?

Answer. I think one-fourth cash down; the balance by notes, and I think a mortgage of the premises. I don't know that I ever paid any thing myself. My brother Newell managed for me and paid my assessments, which were paid; and when I went off, I left all with him.

36. Do you or do you not know that that mortgage remains wholly unpaid, and has been foreclosed?

Answer. I don't know any thing about it.

37. How much was your part of the sale money when the ledge was sold to the company?

Answer. I never got any thing, but I lost all I had in it. The sale, I think, was for the notes of the company.

38. How many rods of road did you make from the quarry to the public road below?

Answer. Something less than a quarter of a mile.

39. From what place were the materials for making said road obtained; were they not wholly taken from the quarry on opening it; could said materials have been hauled any where else as well as to the road?

Answer. None of the materials except some earth was taken from the quarry. To get it to the road, it had to be drawn further than to remove it from the quarry merely would require.

40. How much stone was ever shipped by the company?

Answer. Only what went to Portsmouth was shipped within my knowledge.

41. Was it not necessary to run lighters or gondolas, to put stone on board the vessels?

Answer. No; there was six or seven feet of water at the wharf, and I think the schooner could lie at it.

GEO. C. THOMPSON.

UNITED STATES OF AMERICA, *First circuit,*
District of Massachusetts:

This ninth day of October, A. D. eighteen hundred and forty-four, personally appeared before me, the above named deponent, who, after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the case for which his deposition was taken, was examined by the parties hereinafter named, on written interrogatories; which, with his answers thereto written down by me, in his presence, after having been carefully read over to him by me, were by him subscribed in my presence, as and for his deposition. Taken at the request of Adams Daniels and als., to be used in a suit in equity, between them and Samuel Warner, pending before the circuit court of the United States of America, for the first circuit holden in and for said district; and the adverse party was present by his counsel, George W. Brown, esq. The said deponent living more than one hundred miles from the place of trial is the cause of taking this deposition.

EDW. G. LORING, *Commissioner.*

June 6th, 1845.—Opened and filed.

To any mayor of a city—justice or judge of a supreme, superior, or county court, or court of common pleas of any of the United States.

Inclosed with these instructions are direct and cross interrogatories to Henry Fiske, of Leslie, Ingham county, Michigan.

You will please, after the receipt thereof, summon said Henry Fiske

before you, and take his answers, under oath, to the several interrogatories in their order.

His answer to each interrogatory shall be fully reduced to writing before he is permitted to know the nature of the succeeding, and so on, until he has answered the whole series of interrogatories. You will permit no one to be present with him or you, when this deposition is taken. You will then let the witness sign the same, and you will certify as follows: "On the day of , by virtue of the instructions hereto annexed, I caused the above named Henry Fiske to come before me, in ; and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories thereto annexed, gave the foregoing answers, by him subscribed in my presence, and the same were by me reduced to writing in his presence." You will then please sign it, with the addition of your judicial title, and annex your seal, or the seal of your office, if you have one. You will please then inclose it in a strong wrapper, and direct it as follows: "Deposition of Henry Fiske, to be used in the case of Warner vs. Daniels. To the clerk of the United States circuit court, within and for Massachusetts circuit. Care of Frederick W. Sawyer, Boston, Mass."

You will please execute and transmit it by mail or otherwise, without delay, and charge your fees to Frederic W. Sawyer, or the defendants.

F. W. SAWYER,
Attorney for Adams Daniels et al.

MASS., ss: U. S. CIRCUIT COURT, 1844.

WARNER
vs.
DANIELS et al.

Direct interrogatories to Henry Fiske, of Leslie, in the county of Ingham, Illinois, judge of probate, to be used in the said suit.

Propounded by said Daniels et al.

1. What is your age and occupation? Where do you reside, and how long have you resided there?

2. Do you or not know Adams Daniels, Joseph J. Fales, and Samuel Warner; and, if yea, where have you seen and known them?

3. Where did you reside in the fall of the year 1836? How far was your residence then from the residence of Samuel Warner?

4. State whether or not an interview took place, at your house, between Adams Daniels and Joseph J. Fales and Samuel Warner, about the 19th day of November, 1836?

5. State the occasion of that interview; how Daniels and Fales happened to be at your house; how Warner happened there; how the subject of trading for Warner's farm happened to be broached; what was said by Warner, and what by Daniels, about such a trade, while at your house?

6. State whether or not the conversation between Warner and Daniels resulted in Warner's inviting Daniels to go and look at his farm?

7. Did or not Daniels go at that time and examine Warner's farm? Did or not you and Fales accompany them? Was you or not present at the whole interview between Warner and Daniels, from their meeting till they parted; or how was it about that?

8. What did Warner hold his farm at? Did he or not want to sell it? Did he or not urge Daniels to buy it? What representations did he make about its capabilities; about the watered land upon it, the silk grass land, the opportunity for a mill privilege, the value of the buildings?

9. Were or not all of these representations of said Warner strictly true, or how otherwise? Was his representations about the capabilities of the said farm inflamed, or how otherwise?

10. What was said by said Daniels to said Warner about the Cleft Ledge Granite Company, and about its stock? State what you heard him say.

11. Was you or not so situated, during their said interview, as to be likely to hear all, or about all, that passed between them?

12. Did you or not see Daniels give Warner a copy of the by-laws of the company, and some other papers?

13. What papers did you see him give Warner?

14. What, if any thing, did Daniels say to Warner about going to Boston, and examining into the condition of the company and the value of the stock for himself?

15. State whether or not Daniels pretended to know much about the value of the stock. State what he said as to that point.

16. State whether or not you heard Daniels represent to Warner that he wanted the farm for the silk business, or that the stock was as good as any Boston bank stock, or that it would pay a handsome dividend the then next spring, or that the company had a vast number of hands to work, or that the company owned a brig, or had a great many contracts for getting out stone, or any representations of like substance and effect.

17. If any such representations had been made at that interview, would you or not have been likely to have known it?

18. What did Fales have to do with this negotiation for the farm? State what he said and done at that interview.

19. Was or not the negotiation entirely confined to Daniels and Warner?

20. What took place when Warner and Daniels parted? What arrangement, if any, was made for a future meeting, and where, and when?

21. What was Warner's farm worth in cash, in November, 1836? What would it have sold for at auction at that time?

22. Was you ever present, after that, at any interview between Warner and Daniels, or Warner and Fales?

23. Did you or not ever hear Warner, after his trade with Daniels, say that he knew more about the stock than Daniels did? Or that he

had informed himself thoroughly about it before he traded? What did you ever hear him say to that point?

24. What have you heard Warner say about the said stock, as to what he knew about it before he purchased, what enquiries he made, &c.?

25. What was Warner's character for shrewdness? What his reputation for bargaining?

26. Was you or not ever present with said Warner and John Archer, when said Warner made any remarks about what he could get for his stock, and what it was worth? If yea, state what he said about its value, and what he had been offered for it.

27. If yea, state what reason said Warner gave for not selling said stock at said price.

F. W. SAWYER,
Solicitor for said Daniels et al.

Cross interrogatories to be propounded to Henry Fiske, the plaintiff first objecting to the direct from the first to the ninth, inclusive, also to 25th, as irrelevant.

1. If, in answer to the 4th direct, you say yea, state what business said Daniels and Fales came to your house upon; how long they were there; whether or not they came to sell C. L. Granite stock, or any other stock or property; and if other, what other, to William Messenger, a Mr. Hancock, or any other person; and if other, what other. Also whether or not Joseph J. Fiske, your brother, had any of said C. L. G. Co.'s stock at any time, and how he came by it?

2. Did or not Daniels have other papers similar to those which he gave to Warner, if any?

3. If, in answer to the 23d, 24th, and 26th direct, or either of them, you say yea, state when and where such conversations, or remarks took place, and who were present at each occasion.

JONA. P. BISHOP, *Plf. solicitor.*

4. Additional cross. Have you received any letters of inquiry, or any other letters from either defendant in this suit, or any other person at any time, in relation to this suit, or to any of the facts in this commission inquired about? If so, annex the same or copies thereof.

J. P. BISHOP, *Plff. Solicitor.*

It is agreed that the within interrogatories shall be sent to any counsellor or attorney at law, to be executed, and his signature in that capacity shall be prima facie evidence of the fact.

F. W. SAWYER, *Solic. for Defts.*

Filed with Plff. July 3, 1844. Return July 20th, 1844.

Depositions of Henry Fiske, of Leslie, in the county of Ingham, and State of Michigan, taken before me, at Mason, in the said county of Ingham, on the 16th day of April, A. D. 1845, as follows:

To the interrrogatory No. 1, the witness answers: My age is fifty

years. My occupation is judge of probate for the county of Ingham, and State of Michigan. I reside in Leslie, in said county of Ingham. I have resided there eight, the 27th day of May next.

To the interrogatory No. 2. I know Adams Daniels, Jos. J. Fales, and Samuel Warner. I knew them in Wrentham, Massachusetts.

To int. No. 3. I resided at Wrentham, Mass., in the fall of 1836. My residence was then about half a mile from the residence of Samuel Warner

To int. No. 4. An interview did take place between Adams Daniels, J. J. Fales, and Samuel Warner, at my house, in the fall of 1836; but can't state the time.

To int. No. 5. The occasion of the interview was a representation made by me to Daniels and Fales that Warner would sell his farm and take his pay in shares of the stock of the Cleft Ledge Granite Company, of which Fales and others were proprietors. Warner was called in by me, I think. Warner enquired about the shares, and Daniels about the farm. There was a good deal said about trading and about the value of the shares, and of the farm; but what was said precisely I can't state.

To int. No. 6. The conversation did so result.

To int. No. 7. Daniels did go and examine Warner's farm. Fales and myself did accompany them. I was present at the whole interview.

To int. No 8. Warner held his farm at four or five thousand dollars; said he wanted to sell it; I think he urged Daniels to buy it; he praised the farm and all its capabilities very highly; can't state the precise language.

To int. No. 9. I think his representations were exaggerated.

To int. No. 10. Daniels referred Warner to the president of the company for information.

To int. No. 11. I was.

To int. No. 12. I did.

To int. No. 13. The by-laws, Dr. Jackson's report, and the act of incorporation by the company.

To int. No. 14. Daniels recommended to Warner to go to Boston and examine for himself.

To int. No. 15. Daniels said the stock was not fairly in market, and recommended Warner to enquire for himself.

To int. No. 16. There was something said about the silk business, but can't say by which; don't remember saying the stock was as good as any Boston bank, but did say it would pay a good dividend if they could get well agoing. He said, also, they were about to buy a brig; did not say they had any contracts for getting out stone.

To int. No. 17. I should.

To int. No. 18. Fales said he had no interest in the trade; but he said he thought the stone as handsome as the Quincy rock.

To int. No. 19. It was, I think.

To int. No. 20. They were to meet again in Boston; can't remember the time.

To int. No. 21. The farm was worth, I think, from 1,500 to 2,000 dollars, and would have sold for that at auction.

To int. No. 22. I think I met them in Boston, at the time appointed by Warner to be there.

To int. No. 23. After Warner bought the stock, he spoke highly of it; said he had thoroughly informed himself on the subject, or something like it.

To int. No. 24. I think he said he knew all about the stock before he bought it.

To int. No. 25. Had the reputation of being shrewd and keen at a bargain.

To int. No. 26. I have heard Warner say he had been offered an advance upon what he gave for the stock, but can't say whether Archer was by—Henry Fiske.

To int. No. 27. Don't recollect.

Cross interrogatories put to the witness Henry Fiske.

In answer to cross interrogatory No. 1. They did not tell me what they came for, but I suppose they came with a view to see Warner; they were there, perhaps, three or four hours; I can't say positively they came to sell stock, but they proposed to do so; they did not then propose or offer to sell this or any other stock to any other persons; my brother Josiah had some of the stock; he bought it of Fales.

To No. 2. Not to my knowledge.

To No. 3. I have heard him make these remarks frequently, and in public places, but can't specify the exact places, nor who were present.

To No. 4. I have received no letter or letters of enquiry from either of the defendants, or any other person, in relation to this suit, except one from F. W. Sawyer, esquire, which requested me to go before the proper officer and give my depositions.

HENRY FISKE.

STATE OF MICHIGAN, *County of Ingham, ss:*

On the sixteenth day of April, in the year one thousand eight hundred and forty-five, by virtue of the instructions hereto annexed, I caused the above named Henry Fiske to come before me, in Mason, in the county of Ingham, and State of Michigan, and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to such interrogatories and cross interrogatories, as should be put to him touching the above named cause, gave the foregoing answers, by him subscribed in my presence, and the same were by me reduced to writing in his presence.

E. B. DANFORTH,
Judge of the cir. ct. for the county of Ingham, in State of Michigan.

I hereby certify, that the annexed commission was received by me, and that I have caused the same to be executed by the above named E. B. Danforth, judge of the circuit court in and for the county of Ingham, and State of Michigan, and the same was so executed in my presence, in the manner set forth in his certificate; and further, that I know the said E. B. Danforth to be judge of the circuit court in and for the said county of Ingham, and he has no official seal.

AUSTIN BLAIR,
Att'y and counsellor at law, of Jackson, Michigan.

INDEX.

	Original.	Print.
Bill in equity	1	3
Subpœna	12	15
Dft. Daniels' answer	12	15
Dft. J. J. Fales' "	21	25
Dft. Scott' "	30	35
Dft. E. F Fales' "	27	32
Motions of the dfts. for bonds for costs	32	37
Order of the court thereon	33	38
Plf 's exceptions to Daniels' answer	33	38
" " J. J. Fales' "	35	41
Daniels' amended answer	38	43
J. J. Fales' answer to exceptions	47	54

DOCUMENTS IN THE CASE.

Agreement between plf. and dft. Daniels	9	12
Certificate, blank, of stock	8	11
Circular of Dr. Jackson	112	124
Commission to John A. Richardson	191	209
" " John J. Clark	51	58
Deed, Warner to Daniels	7	9
John T. Emerson to C. L. G. Co.	200	219
J. J. Fales and N. A. Thompson to C. L. G. Co.	201	220
Jacob J. Pendexter to Edward Pendexter	204	224
Edward Pendexter to J. J. Fales and others	205	225
Paul Chesley to Edward Pendexter	206	226
A. Daniels to J. J. Fales	240	264
Stephen Cummings to Adams Daniels	242	265
Letters of J. J. Fales to Levi Bates	92	102
Charles T. Jackson to J. J. Fales	112	124
Mortgage of Daniels to Elisha F. Fales	10	13
" " " Scott	11	14
" " C. L. G. Co. to J. J. Fales and N. A. Thompson	198	217
" " J. J. Fales et als. to J. J. Pendexter	202	222

TESTIMONY OF PLAINTIFF.

Interrogatories to	Page.	Cross inter's.	Answers.	Print.
Peter Harvey	52	54	52—55	59
Ezra Wilkinson	55	58	55—58	62
Samuel Warner, jr.	59	60	59—62	66
Caleb Whiting	62	68	62—73	70
Elias Whiting	73	77	73—80	82
James B. Wilson	80	84	80—84	89
Walter H. Fisher	85	—	85—87	94
Levi Bates	87	91	87—92	97
Aaron D. Capen	186	188	186—190	204
John T. Emerson	192	195	216—229	237
Daniel Mathews	192	195	211—216	232
Valentine Mathews	192	195	230—234	253
Seth S. Walker	192	195	226—230	248
George Ffrost	192	195	221—225	243
Charles Young	194	—	198	217
J. J. Pendexter	192	195	207—211	228
Henry N. West	234	236	237—239	261
Jefferson Chamberlain	236	—	240	263

DEFENDANTS' TESTIMONY.

	Interrogatories.	Cross.	Answers.	Print.
Henry Gilbert	93	95	93—104	103
Charles T. Jackson	105	106	105—112	116
Newell A. Thompson	114	118	114—134	126
John F. Archer	135	136	135—139	149
John W. Whiting	140	142	140—145	154
John E. Brown	146	151	146—157	161
Freeman Foster	158	159	158—163	174
John H. Mason	164	165	164—169	180
Laban Adams	169	171	169—176	186
George Odiorne	176	179	176—184	194
Samuel O. Daniels	184	—	185	203
Henry Fiske	253	254	255--256	277

ERRATA.

Insert on page 7:

October 26, 1842.

Filed in the clerk's office, and subpœna issued ret. at the November rules.

U. S. A., DISTRICT OF MASSACHUSETTS,
City of Boston, Nov. 1, 1842.

Personally appeared before me the above named Samuel Warner, and affirmed that the matters in said bill by him subscribed are true, so far as stated on his knowledge, and so far as on the information of others, he believes them to be true, (the said Warner having religious scruples against taking an oath.)

EDWARD G. LORING,
Master in chancery and commissioner.

Insert on page 12:

[SEAL.] UNITED STATES OF AMERICA,
Massachusetts district, ss:

To Adams Daniels, of Medway, in the county of Norfolk, in said district, trader, Joseph J. Fales, of the city of Boston, physician, Elisha F. Fales, of Wrentham, in said district, trader, and Samuel B. Scott, of Franklin, in said district, trader, greeting:

For certain causes, offered before the circuit court of the United States of America, for the first circuit, within and for the Massachusetts district, as a court of chancery, we command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally be and appear before our said circuit court, at the rules, to be holden at the office of the clerk of our said court, in Boston, in said district, on the first Monday, being the seventh day of November next, to answer concerning those things which shall then and there be objected against you by Samuel Warner, of Providence, in the county of Providence, and State of Rhode Island and Providence Plantations, esquire, and a citizen of said State, in his bill of complaint, and to do further, and receive that which our said circuit court shall consider in this behalf. And this you are in no wise to omit, under the penalty of five hundred dollars, and have you there this writ.

Witness the honorable Roger B. Taney, esquire, at Boston, this twenty-sixth day of October, A. D. 1842, in the sixty-seventh year of the independence of the United States of America.

FRANCIS BASSETT, *Clerk.*

Memorandum.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

U. S. A., MASS. DISTRICT, *ss:*

BOSTON, *October* 29, 1842.

Pursuant hereunto I have notified the within named Daniels, J. J. Fales, E. F. Fales, and Saul B. Scott, by giving to each in hand a true and attested copy of this subpœna, to appear as herein directed.

HENRY HARRIS,
U. S. deputy marshal

4 services, - - -	$8 00
4 copies, - -	4 00
Travel and expenses, -	6 85
	$18 85

Insert on page 27:

Oath of J. J. Fales.

Insert on page 33:

Order of court overruling motion for bonds.

APPENDIX.

I, Saul B. Scott, of Franklin, in the county of Norfolk, and Commonwealth of Massachusetts, of the age of about forty-one years, on oath depose and say, in answer to the several interrogatories and cross interrogatories hereinafter written, as follows, namely:

Interrogatories propounded by F. W. Sawyer, esq., solicitor for Adams Daniels and Joseph J. Fales.

1st interrogatory. How long have you lived in Franklin, and what business have you pursued?

Answer. I have lived there ten years, I believe, and am a trader.

2d interrogatory. Are you or not acquainted with Samuel Warner, and where have you seen and known him?

Answer. I am some acquainted with Samuel Warner; and have seen him at my store in Franklin, and at his house in Wrentham, and have met him at other places. Warner's farm was about three or four miles distant from my place of business.

3d interrogatory. Do you or not know Adams Daniels; state how long you have known him, and what connexion in business has existed between you, and what existed in the year 1836?

Answer. I do know Adams Daniels. I have known him as long as twenty years. In the year 1834, we formed a copartnership together in trade, and continued copartners in business to 1840. We did business together under the name and style of Scott & Co.

4th interrogatory. Where was said Daniels' place of residence in 1836; what department of the business of Scott & Co. did Mr. Daniels more particularly superintend?

Answer. Said Daniels in 1836 made it his home in Boston. He bought our goods in Boston principally, did but very little at our place of business in Franklin.

5th interrogatory. Where did Daniels stop when he came out to Franklin; where did he make it his home when he came out to attend to business out in your neighborhood?

Answer. With me.

6th interrogatory. What was his usual mode of conveyance out; what conveniences had you for his transacting his business after he got there; did you or not ever know him to come out into Franklin, or the neighboring towns, without calling at your house?

Answer. He usually came out in the stage, and sometimes in a gig, sometimes in a wagon, and sometimes I brought him out. We kept a company horse, which he always used as he wanted, either in his own business, or on business of the company. I don't know that I ever knew of his ever coming out any where nigh to Franklin, without coming to my house.

7th interrogatory. Where was Mr. Daniels for some weeks previous to the 19th day of November, 1836; was he or not in the eastern country? State what you recollect of his being away previous to his first interview with Warner.

Answer. He was, from somewhere about the middle of October, 1836, to about the 18th or 20th of November, down East, in the State of Maine. I frequently wrote him during that period at Bangor and Old Town, and received letters from him from there.

8th interrogatory. Do you or not recollect the time that Mr. Daniels had his first interview with Samuel Warner, about trading for his farm; state how many days Mr. Daniels was out in your neighborhood at that time.

Answer. He came out to our place in the stage about the 20th of November, 1836, immediately on his return from the eastern country; he was then out there about three days; he took our horse and carriage and went to Attleboro', on his own private business, during that time. I know nothing of his having an interview with Samuel Warner at that time, except from declarations of Adams Daniels.

9th interrogatory. Where did Adams Daniels go after he returned from Attleboro', and how soon was he at your house again?

Answer. He went back to Boston; he came out again on the 7th day of the next December, I think.

10th interrogatory. Will you please to state what took place on the next day after Mr. Daniels came to your house; this testified to. State particularly where you went, and who you saw, and what was said and done, as well as you can recollect it.

Answer. Adams Daniels shew me an obligation signed by Samuel Warner to convey to him his farm in Wrentham; the next day I carried him over to Warner's at Wrentham; we there saw Mr. Warner; Daniels spoke to him; Warner said he did not expect him, or did not know that he would come, or something like that; then Daniels asked him what he should have done with the bond if he had not come; Warner said he should have made him pay it; Warner asked Daniels if he would write the deed; Daniels declined, and said he thought Mr. Fiske of Wrentham would be a good person to write it; Warner said that he should pay nothing for writing the deed; perhaps some more conversation might have passed between them, but I do not recollect any thing more. He and Warner then went to Mr. Fiske's office in Wrentham. Mr. Fiske then wrote a deed from Warner conveying his farm in Wrentham to Adams Daniels; then some conversation passed between Mr. Fiske and Mr. Warner; this deed was executed and delivered.

11th interrogatory. Please to state if any thing was said by Mr. Warner at that time about his having taken measures to ascertain the value of the stock he was negotiating for; who, if any one, did he say he had called upon for information; what, if any thing, did he say about knowing more about it than Daniels did?

This question is objected by G. M. Brown, esq., as leading.

Answer. Mr. Warner said he had examined the books, and had called

on Mr. Odiorne, and was satisfied that the stock was good. He stated to Mr. Fiske that he presumed he knew more about the stock than Mr. Daniels did; and in the course of the same day I heard him say that he was perfectly satisfied with the trade he had made with Daniels.

12th interrogatory. How soon after that did Mr. Daniels return to Boston, if at all? Where was he from that time until some time in the month of February then next?

Answer. He returned to Boston the next morning. He then soon after went again down East, and was there until some time in January next; my only means of knowing this last fact are, that being a copartner of mine, he directed me not to send money to him until he should write, as he was going down East.

13th interrogatory. Did you or not have occasion to send or go to Boston for goods during his absence at this time? Did you or not attend to the Boston business in Mr. Daniels' absence?

Answer. I did.

14th interrogatory. When was he first again at Franklin, or in your neighborhood, to your knowledge?

Answer. I think something past the middle of February, but cannot state the day exactly.

15th interrogatory. Do you know whether or not he then went over to Mr. Warner's?

Answer. I do not.

16th interrogatory. Did you or not know of his going over to Warner's to lease the farm?

Answer. On the 27th of February, 1837, he went over to Mr. Warner's, and leased the farm; the leases bear date the 27th, and the next day, or within a day or two, went over and exchanged the leases.

17th interrogatory. Did you or not go over at any time to one Caleb Whiting's with said Daniels? If so, when was it, and what for?

Answer. About the middle of March, the 16th or 17th, I think the 17th, I carried Mr. Daniels to Caleb Whiting's, to view Whiting's farm.

18th interrogatory. How long were you at Mr. Whiting's? Did you or not go over the farm? Did you or not see Mr. Warner during the time?

Answer We passed about half of a day there. We went over the farm, and saw Mr. Warner.

19th interrogatory. What was the nature of the negotiation between Whiting and Daniels? How was Daniels to pay for the farm if they traded?

Objected to by Mr. Brown as irrelevant.

Answer. He was to pay for it by a note which he held against the Granite Company.

20th interrogatory. Did you or not hear any conversation between Whiting and Daniels about the reason why Daniels proposed to buy said farm?

Objected to by Mr. Brown as irrelevant.

Answer. I did. Because this farm adjoined the Warner farm; and that by taking a part of the Warner farm and adding it to the Whiting farm, which was a small farm, they would make two good sized farms.

21st interrogatory. Were there or not any other advantages to be expected from one man owning both farms, on account of their location, &c.? State what was talked over at that time.

Answer. I do not recollect any other, except that a part of the Warner farm adjoining the Whiting farm is up a very steep hill, and is on a level with the Whiting farm.

22d interrogatory. Did you or not hear said Daniels say any thing about wanting said farm for the silk business, or any particular purpose of that nature?

This question objected to by Mr. Brown as irrelevant and leading.

Answer. I did not.

23d interrogatory. Did you or not hear said Daniels make any representations to said Whiting about the condition, ability, or prospects of the said Granite Company; and if so, what? If nay, what arrangement, if any, was made, by which said Whiting was to inform himself about those things?

Answer. Mr. Daniels proposed that Whiting should come to the city and make examination to satisfy himself, and if they traded, Daniels was not to pay any thing; if they did not trade, Daniels was to pay his expenses, down and back, and while in Boston. I never heard Daniels make any representations to said Whiting about the condition, ability, or prospects of the said Granite Company.

24th interrogatory. Did you or not hear said Daniels, at that time, attempt to tell Mr. Whiting what property the company possessed? Did you hear either Whiting or Daniels speak about, or refer to, any vessels, contracts, dividends, or any thing else, relating to said company?

Answer. To the first branch of this interrogatory I answer, no; to the latter branch of said interrogatory I answer, that I heard Whiting and Daniels talking about a scow to convey stone.

25th interrogatory. Was you or not present with Daniels and Whiting during the whole of this interview, or how otherwise? Did you or not hear the whole of the conversation that passed between them at that time, or how otherwise?

Answer. I presume so; pretty much of it. I was not away during any part of the time, as I know.

26th interrogatory. What arrangement was fully determined upon between Whiting and Daniels about the former going to Boston? When was he to go? What do you know about his going?

Answer. He was to go to Boston about the 25th, 26th, or 27th of March, on Monday, and meet Daniels. On Wednesday succeeding the said Monday, Whiting came up to Franklin in the stage, and said he had been to Boston, and should not trade with Mr. Daniels, and asked

me to pay his expenses. I refused to do it. He left for the purpose, as he said, of going to Medway to see Mr. Daniels, who, I supposed, was there taking an account of stock.

The above question and answer both objected to by Mr. Brown as irrelevant.

27th interrogatory. How much would the Warner farm have brought, in your opinion, in cash, in November, 1836?

Answer. It might possibly have brought three thousand dollars; not more than that, I think.

28th interrogatory. What was and has been the responsibility of Adams Daniels for the sum of three or four thousand dollars from that time to this? Has he or not had a stock of goods, and been doing business ever since?

Answer. His responsibility has been good for twice that amount, and more too. He has had a stock of goods and been doing business ever since.

29th interrogatory. When you took Adams Daniels' note for four thousand two hundred dollars, and mortgage on the Warner farm to secure it, what was it for; and had you or not any other mortgage to secure said note?

Answer. It was for liabilities I had incurred for him. I had another mortgage to secure said note.

Cross interrogatories propounded by G. M. Brown, esq., solicitor for Samuel Warner, de bene esse.

1st cross interrogatory. If Daniels was good for so much as you have just stated, why did you think it necessary to get that additional mortgage?

Answer. At that time he was doing considerable business, and it was rather a critical time.

2d cross interrogatory. Had Daniels any other business in Boston, and what was it, during the fall and winter of '36, except buying goods for your company?

Answer. I do not know that he was engaged in any particular trade, but was engaged in eastern lands, as I learned from report.

3d cross interrogatory. How much of his time did said Daniels spend in Boston during the fall and winter of '36?

Answer. I cannot tell. I did not keep the run of him while he was in Boston.

4th cross interrogatory. How much of his time did he spend at the store of Scott & Co., in Franklin, during that period?

Answer. Not but very little. Not much of any till about the last of February, 1837.

5th cross interrogatory. How do you know that Daniels was at Bangor and Oldtown from middle of October till 18th or 19th of November; what circumstances enable you to designate the exact dates?

Answer. I know that he was there about that time, from a letter that

I received from him, and from correspondence with him. I do not know, and have not stated, the exact days.

6th cross interrogatory. What was the subject and nature of your correspondence between said dates? Annex letters of his.

Answer. I object to answer this question. Not having the letters by me I cannot annex them, and cannot tell what was the subject or nature of said correspondence; undoubtedly it concerned our private business.

7th cross interrogatory. How, then, can you tell the dates of said letters?

Answer. I have not attempted to tell the dates, and cannot tell the dates.

8th cross interrogatory. Have you or not stated that Daniels was at Bangor and Oldtown from middle of October to 18th or 20th of November, '36, and that you know this from correspondence with him?

Answer. Yes.

9th cross interrogatory. Can you or not then tell what that correspondence referred to?

Answer. Undoubtedly our company affairs.

10th cross interrogatory. What affairs in particular?

Answer. I do not know in particular.

11th cross interrogatory. Why do you not know in particular?

Answer. Because in a year perhaps I write a thousand letters.

12th cross interrogatory. How came you, then, to recollect so particularly the several dates of said letters?

Answer. I have not stated the particular dates of said letters.

13th cross interrogatory. How came you to recollect that you corresponded between the middle of October and the 18th or 20th of November, '36?

Answer. It is a pretty hard question for me to answer how I came to remember, but I do recollect it.

14th cross interrogatory. Have you any recollection whatever of the subject of your said correspondence?

Answer. None.

15th cross interrogatory. In what respects was it a critical period with Daniels and his affairs when you took said mortgage?

Answer. He was dealing in eastern land, or had been, pretty largely, and owed some notes, and it was hard times generally; and I considered it good policy to secure myself, as every body else does.

16th cross interrogatory. What notes were against him to which you refer?

Answer. Some notes that I endorsed, and some others that I do not recollect.

17th cross interrogatory. What led to your taking said mortgage; did he offer it to you, or did you require him to give it?

Answer. I can't say which proposed it.

18th cross interrogatory. How came it to be proposed?

Answer. To secure me. About the 20th of March, 1837, Mr. Dan-

iels bought a stock of goods at Medway, and to secure the seller, I had to give my note, and mortgage my real estate to secure it, and from time to time let Mr. Daniels have money for that concern; and to secure me, he gave me these mortgages.

19th cross interrogatory. How came it to be necessary for you to give your note, and mortgage your real estate for the goods which Daniels had so bought?

Answer. Because Mr. Pond, of whom they were purchased, required it.

20th cross interrogatory. How many letters did you receive from said Daniels, and how many did you write to him, during the period between the middle of October and the 18th or 20th of Nov'r, 1836?

Answer. I cannot say the exact number.

21st cross interrogatory. Did you receive more than one?

Answer. I presume I did.

22d cross interrogatory. Do you know whether you received more than one?

Answer. I think I did.

23d cross interrogatory. What makes you think so?

Answer. Because we often corresponded when he was in Boston, and when down east our business led to it.

24th cross interrogatory. Is that the only reason of your thinking so? If not the only, state the reasons.

Answer. I have no other reason.

25th cross interrogatory. What was Daniels' business at Oldtown?

Answer. I cannot say. I know no more of his private business than any other man, unless I am with him.

26th cross interrogatory. Have you never heard him say?

Answer. No.

27th cross interrogatory. Was there not any allusion to said business in your said correspondence?

Answer. I think not.

28th cross interrogatory. When have you last seen said correspondence, or said letters, or any of them?

Answer. I cannot say.

29th cross interrogatory. Why cannot you say?

Answer. Because I cannot recollect. I have within three days seen letters addressed to Mr. Daniels, postmarked all the way from the middle of October to about November 18th. They were shown to me by Mr. Daniels since I started to come here. I did not open them, but only saw the address and post-marks.

30th cross interrogatory. What was Daniels' business at Bangor?

Answer. I cannot say; but not company business.

31st cross interrogatory. Have you never had any knowledge of what Daniels' business eastward was? Have you never heard him speak of it?

Answer. I never have had any knowledge of what Daniels' business

eastward was; I possibly may have heard him speak of it, but do not recollect that I have.

32d cross interrogatory. Do you or not know that he went there on account of his land speculations?

Answer. I do not.

33d cross interrogatory. Did you or do you know any thing of a trade made between said Daniels and one West at Oldtown; what was that trade; when was it?

This question objected to by Mr. Sawyer.

Answer. I do not.

34th cross interrogatory. Do you or not know that Daniels exchanged Cleft Ledge G. Co.'s note for a house and land, or other real property, with said West.

This question objected to by Mr. Sawyer, as irrelevant.

Answer. I do not.

35th cross interrogatory. Did you ever hear any thing said about said trade; did you ever hear it spoken of; did you ever hear Daniels speak of it?

This question objected to by Mr. Sawyer, as irrelevant and incompetent.

Answer. No.

36th cross interrogatory. Do you or not know that said Daniels owns or owned a house and lot in Oldtown?

This question objected to as irrelevant.

Answer. I do not know for a certainty, but have heard that he did own a house and lot in Oldtown. I believe I did once have a mortgage on it from Daniels.

37th cross interrogatory. When was that mortgage given and dated?

This question objected to by Mr. Sawyer as irrelevant.

Answer. I don't recollect. It was given at the same time, I think, or about the time, that the mortgage of the Warner farm, before referred to, was given.

38th cross interrogatory. Have you that mortgage in your possession? If so, please annex a copy.

Answer. I have not, and cannot annex a copy. I presume it may be among my papers. If I can find it, I will forward a copy of it to the commissioner within three or four days; if not, a copy can be obtained from the registry of deeds in Bangor.

39th cross interrogatory. How do you know that Daniels went to Warner the 27th of February, '37, or within a day or two? Might it not have been longer than a day or two afterwards that he went?

Answer. I did not say that he went to Warner's the 27th of Februaary, '37, but that he went within a few days. I know it, because he took our horse and carriage, and started for the purpose of going there; and because the leases were dated about that time, and I have seen the leases within a few days. Mr. Daniels shew them to me.

40th cross interrogatory. What makes you think it was 17th of March you carried Daniels to C. Whiting's?

Answer. From minutes on a memorandum that was used on that day, of the sum of two dollars paid by Mr. Daniels to Harvey Whiting, for repair of a school-house in the district that the Warner farm is in. The memorandum that I refer to is on a memorandum book of Mr. Daniels, made in pencil by Mr. Daniels—I presume made by him at the time he paid the money. I did not see him make the memorandum. I know farther by the agreement made by Whiting to meet Daniels in Boston the next week.

41st cross interrogatory. If you say you did hear said Warner say any thing about his trade with Daniels, or about the Cleft Ledge Granite stock, or about his having enquired about or examined into the business, or any thing else by which you or defendant Daniels intend to show said Warner bought said stock upon his superior knowledge of said stock to that of said Daniels, will you be as precise in stating all was said at the time to draw out of said Warner such a remark?

Answer. I cannot state farther than I have before stated upon the subject enquired of.

42d cross interrogatory. Was or not some one, at the time, joking said Warner about his trade; if so, who was it; what said by all the other persons present at the time? Was it or not a subject which, at the time, affording much jesting, talk, and astonishment, in Wrentham and Franklin, that Warner should make such a trade; were or not people at the time rallying said Warner upon his trade for the sake of sport?

Answer. No one was joking said Warner at the time about his trade. I do not recollect what was said by all the other persons present at the time. I do not recollect any persons being present except Warner, Daniels, Fiske, and myself. I do not recollect anything more being said, except what I have before related. As to the remainder of this interrogatory, I answer that I do not know.

43d cross interrogatory. Was or not what Warner said anything more than would naturally be expected from a deluded man, who actually believed he had made a good trade, and was rallied and joked at every corner, and felt a necessity of saying something in defence of himself?

Answer. I did not consider him a deluded man; whether joked or not, I do not know; I believe he was sincere in what he said, and satisfied with the trade; more than three months afterward, he stated to me that he was satisfied with his trade.

44th cross interrogatory. How do you stand connected with Daniels as to relationship? Were you or not a partner of his at the time you heard this conversation? What did you go to Wrentham with Daniels for? What part did you act in the affair which led you to Fiske's office?

Answer. I am not related to Daniels at all; I married a sister of Daniels; I was a partner of his at the time I heard the conversation alluded to in this interrogatory; I went to carry Daniels up to Wrentham; I acted no part, and took no interest in the affair which led me to Fiske's office; I witnessed the deed.

45th cross interrogatory. Will you be so good as to recollect what liability you were under for Daniels at the time you took the mortgage of the Warner farm? Can't you recollect that as well as you can what was said upon a subject in which you had no interest so long ago? State particularly all about your liability, as fully as though you were trying to give an understanding of the business to us.

Answer. I made three notes to Abel Pond, in all amounting to between two and three thousand dollars, I made some other notes, how many, or to whom given, I do not recollect; I have made a great many notes, and have done a great deal of business, and because Warner appeared so well satisfied with his trade, are reasons that I should not be as likely to remember about said liabilities as well as what Warner said upon a subject in which I had no interest so long ago.

46th cross interrogatory. Why cannot you as well recollect the minutiæ of such interesting transactions to you as require a mortgage of $4,200 to save from a loss, as you can any word that was said nine years ago by a poor deluded man, who was made the butt and rallying stock of all the jocose meddlers and loafers in the vicinity for his folly?

This question is objected to by Mr. Sawyer.

Answer. When my notes are paid, I do not charge my mind with it, and have not referred to my note book; and since this suit has been brought, I have frequently thought upon the subject of the conversation at the time the deed was made.

47th cross interrogatory. Do you attempt to give any word Warner said upon the subject, without addition or danger of leaving any off? Do you attempt to give any word was said by all others at that time? Do you attempt to put all the words of all present in the precise order in which they were said? If you do not, why do you not? Sure enough, how can you or any other man recollect words and their order so long?

Answer. I do not, because it is impossible for me, or I should think for any man, to do it.

48th cross interrogatory. Have you or not ever had any conversation with either of said defendants, or heard either of them in conversation with other persons, concerning a company or corporation which they called the 'Cleft Ledge Granite Company?' If yea, with which of said defendants had you such conversation, or which had such conversation with others in your hearing? With whom was said conversation; when and where was it; who else was present? State particularly the whole conversation.

This question is objected to if Warner was not present.

Answer. I have had conversation with Mr. Daniels concerning the Cleft Ledge Granite Company, but not with Fales; in the store that we then occupied; I should think it was in the fall of 1836: I can't say who else was present; it was in the store; and I presume others were present, but whether or not listening to the conversation, I do not know; I cannot state the whole conversation; it was about the granite stock, and the note that he held against the Granite company; he said it cost

him dollar for dollar; I do not recollect what else was said; Warner was not present.

49th cross interrogatory. Have you or not ever heard either of defendants make any statements concerning the value of the stock of said company or corporation? If yea, to whom; when and where; who was present; what was their statements?

Answer. I have not.

50th cross interrogatory. Have you or not ever heard either of the defendants make any representations concerning the property of said company or corporation? If yea, what property did they say said company owned? What was their whole statement about said company's property? When and where was it; who was present; to whom were such representations made?

Answer. I have not.

51st cross interrogatory. Have you or not ever heard either of said defendants speak of or make any statement concerning any contracts of said company for furnishing stone? If yea, what contracts did they or or either speak of; to what amount; with whom? State particularly all that was said by either, and to whom it was said, with the time and place and persons present.

Answer. I have not.

52d cross interrogatory. Have you or not ever heard either of said defendants make any statement of their willingness to guarantee said stock to pay a handsome dividend to its stockholders, or say any thing about dividends upon said stock? If yea, state particularly and fully all either of them said, with the time and place, who was present, and to whom it was said.

Answer. I have not.

52d cross interrogatory. Have you or not ever heard either of the defendants make any statement with regard to the indebtedness of said company? If yea, state particularly what they said, with the time and place, who present, and to whom said.

Answer. No.

54th cross interrogatory. Have you or not ever heard either of the defendants make any statements concerning the number of hands said company employed in getting out rock? If yea, state particularly and fully all was said by either, when and where, and who was present, and to whom said?

Answer. No.

55th cross interrogatory. Have or not said defendants, or one of them, ever proposed to sell or exchange with you some shares in said company's stock, or some of said company's notes, for property of yours? If yea, state particularly and fully all the conversation between you and either of the defendants upon the subject, and what was done by you and either of them toward such negotiation?

Answer. No.

56th cross interrogatory. If either of the defendants ever made such

proposition as enquired of in the last interrogatory; what use did they say they wished to make of your property?

Answer. Neither of them ever made such a proposition.

57th cross interrogatory. Have you or not ever at the request of either of defendants taken any measures to ascertain the value of said stock or said company's notes? If yea, what; and did you or not ever report to either of the defendants the information respecting said stock or notes you had gained; state when and where you made inquiries, what you learned, and what you reported to the defendants, or either of them, when and where, and so forth, and what reply either of the defendants made to your report to them of the result of your inquiries?

Answer. No.

58th cross interrogatory. Did or not either of said defendants in your hearing express reluctance to selling the stock they had in said company, and assign any reason which induced them to do so? If yea, state particularly and fully all was said by either of them.

Answer. No.

59th cross interrogatory. If you ever enquired of either of the defendants why they wished to sell so valuable stock, what reason did they assign?

Answer. I never made such an inquiry; and I never heard either of them assign any reason.

60th cross interrogatory. Did you or not ever hear either of defendants say any thing about the individual liability of the stockholders of said company to pay the company notes? If yea, state fully all they said.

Answer. I never did.

61st cross interrogatory. If you ever had any conversation with either of the defendants about their prospects of selling any more of said stock than they then had sold, what was the whole said by you or them? State fully when and were, and so forth.

Answer. I had no conversation of such a character as is enquired of with either of them.

62d cross interrogatory. Have you or not ever seen either of the defendants exhibit any papers purporting to be representations concerning said company or its property? If yea, what papers were exhibited by them; to whom were they exhibited; when and where was it; what was said by either of them about the papers?

Answer. Mr. Daniels, about the time he traded with Warner, shew me the report of Dr. Jackson, at our store in Franklin. I do not recollect that any thing was said about it; Fales has never exhibited any papers to me or in my presence to any one else of the character enquired of.

63d cross interrogatory. If you ever heard either of the defendants say any thing about said company owning a brig or other vessel, or about employing any person to sail said brig and look after their navigation, state particularly and fully all either of the defendants said upon the subject; with the time, place, and so forth, and to whom said.

Answer. I heard Daniels speak about a scow that was owned by the company for moving stone to Mr. Caleb Whiting, about the time he examined the Whiting farm, about March 17th, 1837; other than this I never heard either of the defendants say anything about said company owning a brig or other vessel, or about employing any person to sail said brig or look after their navigation?

64th cross interrogatory. If you ever heard either of the defendants compare the value of said company's stock with any other stocks, state fully all either said upon the subject, time, place, and so forth.

Answer. I never heard either of them make such a comparison.

65th cross interrogatory. If you ever heard either of the defendants say anything about said company have[ing] large contracts for furnishing stone, with whom did they say said contracts were; to what amount; for what use did they say said contractors would [put] said stones?

Answer. I never heard anything said upon the subject.

66th cross interrogatory. Are you or not acquainted with a farm situated in Franklin and Wrentham, on which the plaintiff formerly lived, which was by him deeded to the said Daniels in the year 1836? If yea, what was the nature of the farm and outlands belonging to the same at that time; have you or not ever heard either of the defendants state the value of the same; or have you or not ever heard either of the defendants state what said farm and outlands cost them or either of them, or what; or what said farm stood them at, by the way or manner they got it; state fully all the conversation upon the subjects as particularly and fully as if specially interrogated upon each and every part of your and their conversation, with either of the defendants, giving the time and place, and so forth?

Answer. The value of said farm and outlands in 1836 was not over three thousand dollars. I never heard either of the defendants state the value of the same. I have heard Daniels say that the stock which he gave for the farm cost him dollar for dollar; it was granite stock; how much I do not know, neither do I know its value; I do not recollect any farther conversation with either upon the subject.

67th cross interrogatory. If you did accompany said Daniels to said Warner's house as enquired of you, at whose request did you go with him; what interest had you in the business to be transacted; how far was your place of business from which you started to go with said Daniels to Fiske's office the way you went; were you then a partner in trade with said Daniels; were you or not a brother-in-law of his; did he or not request you to notice and recollect what remarks or replies Warner should make the remarks he (Daniels) should make to Warner; what was the purpose or necessity of Daniels requiring you to accompany him; were you a mere spectator and an impartial observer of what was being done, or had you some kind of agency, or interest in the business? If an agent or helper on of the business, in whose interests were you enlisted? In your partner's and brother-in-law's or said Warner's? How long after you were at Fiske's office, and heard him and said Daniels joke Warner about the sale of his farm, and heard

his remark in reply? Was it before Daniels gave you a mortgage deed of said farm, purporting to secure you for a note of $4,200?

Answer. I went at the request of Mr. Daniels; I had no interest in the business to be transacted; it was four miles and a half the way we went from our place of business to Fiske's office; I was then a partner in trade with said Daniels; I was a brother-in-law of his; he did not request me to notice or recollect what remarks or replies Warner should make to the remarks he should make to Warner; I do not know the purpose or necessity of his requiring me to accompany him; I had no agent or interest in the business, but was a mere spectator and looker-on; I think I took the mortgage to secure a note of $4,200 the next October after we were at Fiske's as before mentioned.

68th cross interrogatory. What mortgage was upon said farm previous to yours from said Daniels? If one Elisha F. Fales about $1,700, did you receive your mortgage from Daniels as security, and consider it good security for the amount of $4,200, over another of about $1,700? If you considered your mortgage gave you perfect and satisfactory security for the 4,200, what did you consider the farm worth at that time; did you or not consider it worth $4,200 & 1,000; did you or not consider it worth more or less than the amount of the two mortgages? If less, why did you receive the mortgage to yourself as satisfactory security? Had said Daniels no other property, with which could have secured you independently of the farm, or with the farm made the security more complete?

Answer. There was a prior mortgage to Elisha F. Fales, for what sum I do not recollect; I did not consider this mortgage alone good security for the said sum of $4,200; I did not consider that the farm would fetch over three thousand dollars; I considered it worth less than the two mortgages; I did not receive the mortgages as satisfactory security; I presume he had other property with which he could have secured me.

69th cross interrogatory. Who proposed that said mortgage should be made to you from said Daniels, you or he; if you, why did you wish it; if he, why did he wish to do it?

Answer. I can't say who proposed it, perhaps both. I wished to be secured, and I presumed he wished to secure me.

70th cross interrogatory. Will you state what liabilities you were under to said Daniels at the date of said $4,200 note and mortgage; will you be as specific as in your power; were you or not at that time liable for him as indorser, guarantor, or surety in any way, shape, or manner; if so, to whom and for what sums; do you or not consider that your joint debts as partners made you liable for him; was or not on account of this liability that said note and mortgage were made; if yea, had your partnership or not sufficient assets to pay their debts?

Answer. The first branch of this interrogatory I have answered before; I do consider that I was liable for our joint debts, but not for his private debts, unless I should endorse for him, or otherwise make myself liable for him; said note and mortgage were made for my lia-

bility for him for his private but not joint debt; not for any debt for which I was liable in my private capacity, or as a partner with him or any other person.

Additional direct interrogatories propounded by F. W. Sawyer, esq.

1st additional direct interrogatory. Did you or not ever know or hear of Mr. Daniels having anything to do with more than one lot of eastern land?

Answer. I heard of his being interested in eastern land; whether one lot or more I do not know.

2d additional direct interrogatory. Are you or not assisted in fixing the time when Daniels returned from the east in November, by the time that elapsed between that time and the time when the deed was passed on the eighth day of December, 1836? Do you or not fix the several dates in some measure by that date?

Answer. No; I fix the dates from my books.

3d additional direct interrogatory. Are you or not assisted in recollecting and fixing the time when you and Daniels examined Whiting's farm, by the minutes you possess of the date of the purchase of the stock of goods in Medway, for which you say you mortgaged your real estate?

Answer. In some measure I am.

4th additional direct interrogatory. What was Warner's capacities for doing business? Did you or not ever transact any business with him, and how did you find him; what was his reputation as to shrewdness in making bargains?

Answer. I have traded with him some; I found him a sharp, shrewd man, and he has always had the reputation of being one of the sharpest and shrewdest men in our parts.

5th additional direct interrogatory. Was or not Warner and Caleb Whiting friendly so far as you know? Did or not Warner favor the idea of Whiting's selling his farm to Daniels for the note of the said company?

Answer. Yes.

6th additional direct interrogatory. Was or not Adams Daniels, in 1836, and afterward, employed to transact business for Massachusetts men who had business in Bangor, and other places east.

Answer. I believe he was.

SAUL B. SCOTT.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On this tenth day of June, in the year eighteen hundred and forty-five, by virtue of a commission to me directed from the office of the clerk of the circuit court of the United States, for said district of Massachusetts, returned with sundry depositions to said clerk's office, on the thirty-first day of May last past, to take depositions to be used in a case

now pending in said court, in which Samuel Warner is plaintiff in equity, and Adams Daniels *et al.* are defendants, I caused Saul B. Scott to come before me, in Roxbury, in the county of Norfolk, in said district; and he, being then and there duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross interrogatories that should be put to him, gave the foregoing answers to the foregoing interrogatories and cross interrogatories by him subscribed in my presence; and the same answers were by me reduced to writing in his presence.

JOHN J. CLARKE, *Commissioner*.

MASSACHUSETTS, *ss:*

United States circuit court.

SAMUEL WARNER, in equity,
vs.
ADAMS DANIELS and JOS. J. FALES.

To the honorable the judges of the United States circuit court, within and for the first circuit.

Humbly shews, Adams Daniels and Jos. J. Fales, that they are defendants in the above entitled case, and that the said plaintiff, by his bill, seeks to recover of your petitioners a certain farm, valued by him at $6,000, and the rents and profits since 1836, or the value thereof in money, with interest thereon since that time.

The several issues raised by the bill and answers are the following, viz:

The bill charges, that your petitioners made to the plaintiff certain false assertions and assurances concerning the value of certain granite stock, and the condition and prospects of the Cleft Ledge Granite Company; and that, by reason of said representations, he was induced to exchange his farm with your petitioners for stock in said company to the amount of $6,000.

It also charges, that said stock was worthless; and that, after the transfer, the defendants incumbered the estate to embarrass the plaintiff, and to prevent his instituting the necessary proceeding to procure the conveyance to be set aside.

The answers of your petitioners deny all of these charges, and set up that the plaintiff bought the said stock after due examination as to its value, and with a knowledge of all the material facts as to the condition and prospects of the said company; that he has, since he purchased the stock, sold and transferred it; and that, at the time of bringing his bill, he was not the legal owner of the stock; and further, that he has been guilty of such laches, in prosecuting his claim to this estate, as he pretends to understand, as to bar his claim in equity.

In support of these several issues, evidence has been taken on both sides; and now your petitioners come into court and suggest, that they are instructed and believe, that a great portion of the evidence taken

and published by the plaintiff to be used in this case, is entirely irrelevant and impertinent, and has no bearing upon the several issues raised by the pleadings. Your petitioners particularly designate the following depositions, parts of depositions, and documents, as liable to the objections hereinafter stated :

First. The entire deposition of Henry N. West—*impertinent.*

Second. The entire deposition of Jefferson Chamberlin, and the accompanying documents—*impertinent* and *incompetent.*

Third. The entire deposition of Ezra Wilkinson—*impertinent.*

Fourth. The entire deposition of James B. Wilson—*impertinent.*

Fifth. The entire deposition of Walter H. Fisher—*ditto.*

Sixth. The entire deposition of Peter Harvey—*ditto.*

Seventh. All of the deposition of Caleb Whiting, except the 19th direct, and the 13, 15, 16, 17, 18, 22, to 27th, inclusive, of the cross interrogatories, and the answers thereto—*impertinent.*

Eighth. All of the testimony of Elias Whiting, except the 19th direct, and the 3d, 10th, and 13th cross interrogatories, with the answers thereto—*impertinent.*

Ninth. Of the testimony of A. D. Capen, the 2d, 3d, 4th, and 5th direct, and the answers thereto—*interrogatories leading.* The 6th, 7th, 8th, direct, as *impertinent.* If the above objections are sustained, the right to use the testimony elicited on cross examination is waived by your petitioners.

Tenth. The entire testimony contained from pages one hundred and ninety-eight to page two hundred and seven, inclusive, being the deposition and accompanying documents of Charles Young, as *impertinent* and *irrelevant.*

Eleventh. Of the testimony of Levi Bates, the 3d, 4th, and 5th direct interrogatories as *leading* and *impertinent*, and the answers thereto. 7th direct, *incompetent* and *impertinent.* If the above testimony is ruled out, your petitioners waive their right to use the testimony of the witness, elicited on the cross examination. Also, the letter from Fales to Bates—*impertinent.*

Twelfth. The copy of mortgage, Daniels to Fales, on page tenth. Also the mortgage, Daniels to Scott, page eleventh.

Wherefore, your petitioners except to the foregoing evidence as impertinent and incompetent, pray your honorable court that the said plaintiffs' said testimony be referred to a master in chancery to report thereon, and that such further order be made in the premises as shall be necessary and proper.

B. R. CURTIS,
Counsel for Defts.
F. W. SAWYER,
Solicitor for Defts.

This bill of complaint was entered at the October term, A. D. 1842, of this court, and was thence continued, from term to term, to the present term of this court, when the court decreed as follows, to wit :

UNITED STATES CIRCUIT COURT,
For the district of Massachusetts.

May term, 1846.

SAMUEL WARNER,
vs.
ADAMS DANIELS et al., in equity.

This cause came on to be heard at the last term, and was argued by counsel, and was thence continued to this term, and thereupon it was ordered, adjudged, and decreed, as follows, viz: The deed given by the complainant to said Daniels, dated Dec. 8th, 1836, is declared null and void; and that, if it shall hereafter appear upon the report of the master that the said Daniels now holds, or can convey, or cause to be conveyed, the legal title to the said farm, in the said bill mentioned, and that said Warner now holds, or can cause to be conveyed, the legal title to the shares received by him, that the said Daniels shall convey the said farm, on receiving a good conveyance of the shares aforesaid, or cause the said farm to be conveyed, by a good and sufficient deed, unto the said complainant, within such time as the court, upon the coming in of the master's report, shall hereafter order and direct.

That it be referred to a master, to wit, Charles L. Woodbury, esq., to examine and report what is the reasonable rent or value of the use of said farm from said 8th day of December, A. D. 1836, and at what time or times said rent would have been payable according to the custom of the county where it is situate, and to report the interest thereon from said time or times. Also to examine and report what strip and waste has been done on said farm since said 8th day of December, 1836, and the value thereof, or the damage to said farm; and also to examine and report what permanent improvements, if any, have been made by said Daniels on said farm, and the value thereof. That said Daniels pay to the complainant the amount of said rent, and interest thereon, together with the amount of the value of said strip and waste, the whole diminished by the amount of value of said permanent improvements, if any; and also, that he, said Warner, recover against said Fales and Daniels the costs of this suit.

By the court, JAS. B. ROBB, *Clerk.*

And on the eighteenth day of September, A. D. 1846, the report of the master was filed in the following words, to wit:

In chancery.

SAMUEL WARNER
vs.
ADAMS DANIELS et al.
U. S. cir. court.

Report.

To the honorable Levi Woodbury and Peleg Sprague, judges of the U. S. circuit court for Massachusetts district:

In pursuance of a decretal order of the honorable court made in the

above cause, and dated I, the subscriber, one of the masters of this court, residing in the city of Boston, having been attended at several times and places in this district by counsel for the complainants and for the defendants, and having taken the testimony of the several witnesses produced before me, on the several matters to be enquired into by such order, and considered the same, I do report—

First. That I have enquired into the reasonable annual rent of premises mentioned, and the value of the use of said farm since the eighth day of December, 1836, and find that the rents of such farm would, according to the custom of the county, be payable annually; and I have found, according to the testimony in this case produced, that one hundred and seventy-five dollars a year, from the first of April in each year, would be a reasonable rent for the same, up to the first day of April, in the year eighteen hundred and forty-three, and since that time, an annual rent of one hundred and twenty-five dollars would have been a fair rent for the use of said farm; and I have cast an account of the sums the said defendant should be chargeable with for such rent, and the interest thereon up to the first day of April, eighteen hundred and forty-six. And I further find, that for the use of said farm between said 8th day of December, in the year eighteen hundred and forty-six, and the first day of April, then following, on which day the said farm was let to a tenant, a very slight value can be given; and the exhibit marked No. 1, herewith appended, contains the said sums, and the interest accruing thereon to the said April first.

And I do further report, that the defendant in this case offered as evidence several leases by him made to tenants of said farm holding under him; and also evidence of the actual deductions that he made to said tenants on account of high rents; and that I did exclude the same as direct testimony, and only regarded them as evidence tending to shew what was a reasonable value of the use of said premises.

And I do further report, that I have examined the amounts laid out by said defendants on said farm for the improvement and repairs of the same prior to the first of April, eighteen hundred and forty-six, and that I have computed interest on the same; making in this, as in the rents, annual rests on the first day of April of each year, but not compounding said interest in any case; and that exhibit marked No. 2, contains the said allowances, and the interest thereon.

And I do further report, that I have examined the question of waste done on said farm; and I find by examination of evidence, that the said Daniels has committed great waste by cutting and selling both wood and timber from the said farm; that I have enquired and ascertained the quantity of land actually cut over by said Daniels, and find of the upper wood lot, two acres three-quarters and twenty-six rods, from the best estimates offered to me; and of the lower wood lot, two acres one-half and twenty-two rods, are cut over by Daniels, as also some scattering wood. I also find, by the testimony of witnesses, that about twelve cords of the wood on the lower lot was cut and carried off by Samuel Warner prior to the defendant's taking possession of said farm. I

also find, from the testimony of witnesses, that the estimated quantity of wood to the acre on those two lots was, on the upper lot, 25 cords; on the lower lot, 15 cords. Also, that for the use of said farm as fire wood, 7½ cords of merchantable wood, in addition to the pickings a year, was a very fair and proper allowance. I find that the wood cut for sale, in all, was in value equal to 74½ cords, at $2, including timber wood, &c. No testimony was offered as to the actual amount required for fencing stuff. The defendant had, in his accounts of the rents and profits of the estate, charged himself with the wood sold and the dates of such sales; on comparing the amount of wood, from the testimony, that had been sold, with the accounts exhibited by said defendant, I became satisfied that he had charged himself with the true value of the wood sold, and have considered such testimony, when joined to the testimony of defendant's witnesses, as proof of the times when wood was sold from said farm. I have, in pursuance of these things, stated the waste which I find to have accrued on said farm, with the dates and the value of said waste, and the interest thereon, to the 1st of April last; for all of which I refer to exhibit marked No. 3, appended to this report.

And I further report, that the counsel for the defendants required that an investigation be had of the deterioration in value of the said farm whilst in the hands of the defendants. It appeared in testimony that the market value of this farm was less than in 1836 by some one thousand dollars, according to the opinion of the most of the witnesses. It also appeared that the tenants who had been on the place had managed said farm as well as tenants usually do. Also, that the market for hay had diminished in that section, owing to the introduction of a railroad from Boston to Providence, instead of the old stage coach line. It further appeared, that other produce had depreciated somewhat, and the general value of farms about that neighborhood was less than in eighteen hundred and thirty-six; the fences, &c., were at present in good repair, reasonable allowance for the effects of time excepted. Acting on these facts, and on the further facts that the actual waste in wood, as well as the rents and the interest thereon, were already accounted for, and one fact to be hereafter mentioned, I concluded that it would be contrary to equity to charge the defendants with this depreciation, and do report accordingly.

The further fact mentioned above is as follows: I find, from the testimony, that the house and barn of said farm were in want of repairs at the time of the passing of the decree of your honorable court, directing reconveyance; that Daniels had been meditating, for a year past, putting the tenement, &c., in repair, and had begun the autumn of forty-six collecting materials for that purpose; that these repairs were actually necessary to the premises, and were to restore the injuries done by decay of time. I find that since the aforesaid first day of April, eighteen hundred and *forty-seven*, the farm has been held by one Cook, holding as tenant under Daniels, at an agreed rent of one hundred and twenty-five dollars, which I find to be a reasonable and fair rent; and that, during this past summer, the said Daniels has put the said house, barn,

&c., in good repair. I find, also, that the tenant, Cook, stipulated with Daniels that he should repair these buildings, and that they were much in need of it. I have held, and do report, that the value of said occupation for this present year, and the value of the repairs and improvements placed upon the buildings, should be accounted for with said Daniels, and the exhibit No. 4 is a true statement of the account. To this the plaintiff, by their counsel, object.

I further report, that since the said property has been in Daniels' possession, he has sold an interest in a cider mill which pertained to said farm, and that a portion of one of the out-lots of said farm have been used by the town of Wrentham for a public road; I have found the value received by said Daniels for said parts of the farm, and the time of sale, and have charged him interest thereon, and report the same in exhibit 5.

I further report, that I find the said Daniels is able to reconvey all of said farm, with the exception of the cider mill and the road above alluded to.

I also find that the said Warner is able to convey two hundred and forty shares of the Cleft Ledge Granite Company; but that, as to the twenty shares remaining, as appears by the testimony in chief, the certificates of the said shares have been lost by said Warner, and it does not appear that the corporation organization of said company is in such a legal form as to be able at this time to replace them. The said Warner offers, by his counsel, to substitute other shares for those, the certificates of which are lost, or to pay the value of the same.

I further report that I find the whole sum due by said Daniels under the decree of your honorable court to be for rent thir eeen hundred and seventy-five dollars, and three hundred and sixty dollars for interest on rent, up to the first of April, eighteen hundred and forty-six; for waste one hundred and forty-nine $\frac{72}{100}$ dollars, and forty $\frac{86}{100}$ dollars, interest on waste to the same time; for the property sold by him forty-seven $\frac{50}{100}$ dollars, and nineteen $\frac{05}{100}$ dollars interest on the same to the same time. I also find that said Daniels is entitled to allowances for repairs, &c., two hundred and thirty-five $\frac{94}{100}$ dollars and ninety-two $\frac{82}{100}$ dollars interest on the same; and I find the balance due by said Daniels on the said first day of April, 1846, to said Warner to be sixteen hundred and sixty-three $\frac{37}{100}$ dollars, and I do report the same to this honorable court. And I further report that, on the first of April, in the year eighteen hundred and forty-seven, the account between these parties, if restitution and settlement be then made as said defendant suggests, will leave a balance due to said Warner, from said Daniels, of $ seventeen hundred and eighty-two $\frac{64}{100}$, including all items as allowed by me, and deducting the sums by me allowed said Daniels.

I further report that the said Daniels claimed to have allowed him fifty dollars, as a reasonable remuneration for his time and trouble in the care and management of the said farm, which said pl'ffs objected to, and the same was by me disallowed.

All which I respectfully submit. CHAS. L. WOODBURY,
Fees of master, $100. *Master in Chancery.*

Exhibit No. 1.

Adams Daniels' rent account.

Rent from year Ap. 1st, '37, to Dr.

Ap. 1st, '38,	$175.	Interest to the 1st Ap., 1846,	$84 00
'39,	175		73 50
'40,	175		63 00
'41,	175		52 50
'42,	175		42 00
'43,	125		22 50
'44,	125		15 00
'45,	125		7 50
'46,	125		
	1,375		$360 00
Int.	360		
Total rent ac't and int.	$1,735		

Exhibit No. 2.

Adams Daniels, allowances for repairs. Cr.

Allowances for year from Ap. 1st, '37, to			
Ap. 1st, '38,	$34 19	Interest on the same to April 1st, 1846,	$16 40
'39,	139 79		67 09
'40,	7 42		2 67
'41,	32		9
'42,	70		16
'43,	20 61		3 69
'44,	13 65		2 62
'45,	1 70		10
'46,	17 56		
	$235 94		$92 82
Interest,	92 82		
	$328 76		

CHAS. L. WOODBURY.

Exhibit No. 3.

Adams Daniels. Waste account. Dr.

Waste charged from year Ap. 1st, 1837,

To Ap. 1st, 1838,	$5 00	Interest on do. to Ap. 1st, 1846,	$2 40
To Ap. 1st, 1839,	8 00		3 36
'40,	11 50		4 94
'41,	16 85		5 05
'42,	99 50		24 00
'43,	6 37		1 11
'44,			
'45,			
'46,	2 50		
	$149 72		$40 86
Interest,	40 86		
Total,	$190 58		

Exhibit No. 4.

Adams Daniels. Rent account for year from Ap. 1st, '46, to Ap. 1st, '47

	Dr.		Cr.
Rent for said year,	$1 25	Allowance for repairs,	$86 02
Interest on waste for said y'r,	8 98	Int. on former allowances,	15 10
			$101 12
Interest on rents due,	82 50		
Do. on sales of property ac't,	3 99		
	$220 47		
	101 20		
	$119 27		

Balance due for the year ending Ap. 1st, 1847.

CHAS. L. WOODBURY.

Exhibit No. 5.

Adams Daniels. Sales of property account. Dr.

14 shares cider mill, sold Ap. 1st, 1839,	$45 00	Interest to Ap. 1st, 1846,	$18 90
Land used by town of Wrentham. Charged Ap. 1st, 1845,	2 50	Int.	15
	$47 50		$19 05
Interest,	19 05		
Total,	$66 55		

Exhibit No. 6.

Adams Daniels. Balance sheet.		Dr.
Rent account to Ap. 1st, '46	$1,375 00	
Int. on do.	360 00	
Waste account to do.	149 72	
Int. on do.	40 86	
Sales of property account	47 50	
Interest on above	19 05	
		$1,992 13
Contra,		
Allowance for repairs to April 1st, 1846	$235 94	
Interest on do.	92 82	
		328 76
Balance due April 1st, 1846		$1,663 37
Balance due on account, as stated for the year, from April 1st, 1846, to April 1st, 1847		119 27
Total balance found due by Adams Daniels to Samuel Warner		$1,782 64

CHAS. L. WOODBURY.

Whereupon it was further ordered and decreed, as follows, to wit:

CIRCUIT COURT U. S., *Massachusetts district*.

In equity, October term, 1846.

WARNER
vs.
DANIELS et al.

And now, upon the coming in of the report of Charles L. Woodbury, esq., master, it is ordered, adjudged, and decreed by the court, that the report of said master be accepted. And it is further ordered, adjudged, and decreed, that said master see that the payments are made, and the conveyances executed pursuant to said report; and that a conveyance of said shares reported to be lost be made by said Warner separately, with an indemnity against any future claim by others therefor, guaranteed by a responsible surety.

By the court. JAS. B. ROBB, *Clerk*.

MASSACHUSETTS, *ss:*

U. S. circuit court, October term, 1846.

SAMUEL WARNER
vs.
ADAMS DANIELS et al.

And now, the said Adams Daniels and Joseph J. Fales, two of the defendants in the above entitled cause, claim an appeal to the Supreme

Court of the United States, from the final decree entered in said cause; and for cause of appeal say, that the said decree should have been that the said bill, as against them, ought to be dismissed, with costs to them.

FREDERIC W. SAWYER,
Solicitor for Daniels & Fales.

I, James B. Robb, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify, that the foregoing is true copy of record and transcript of papers filed in said cause.

In witness whereof, I have hereto signed my name, and affixed the seal of said court, this eleventh day of December, A. D. 1846, [L. S.] and in the seventy-first year of the independence of the United States of America.

JAS. B. ROBB.

Filed Jan'y 1, 1847.